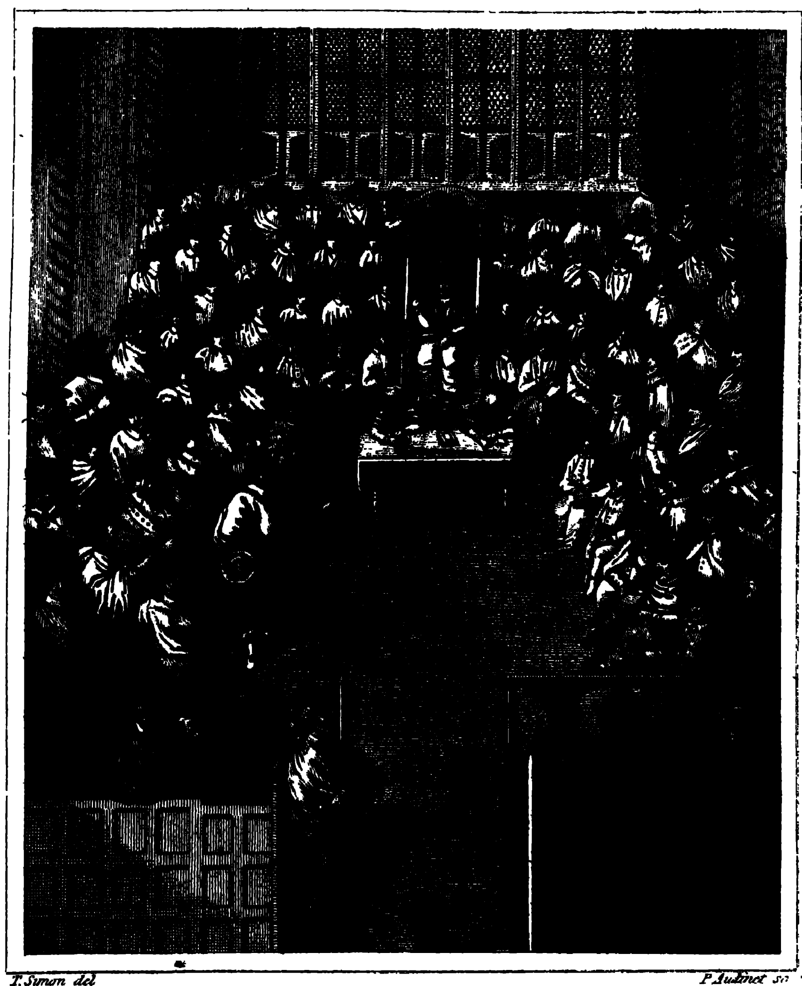


T. Simon del — P. Audinet sc.

The House of Commons.

as in 1656.

Published by Henry Colburn, London. 1828

DIARY

OF

THOMAS BURTON, ESQ.

MEMBER IN THE PARLIAMENTS

OF

OLIVER AND RICHARD CROMWELL,

FROM 1656 TO 1659:

NOW FIRST PUBLISHED

FROM THE

ORIGINAL AUTOGRAPH MANUSCRIPT.

WITH AN INTRODUCTION,

CONTAINING AN

ACCOUNT OF THE PARLIAMENT OF 1654;

FROM THE JOURNAL OF

GUIBON GODDARD, ESQ. M.P.

ALSO NOW FIRST PRINTED.

EDITED AND ILLUSTRATED

WITH NOTES HISTORICAL AND BIOGRAPHICAL

BY JOHN TOWILL RUTT.

LONDON:

HENRY COLBURN, NEW BURLINGTON-STREET.

1828.

PREFACE.

THE period of English history, from the opening of the Long Parliament to the Restoration, has been justly regarded as the most eventful and interesting which had occurred during the century. It was distinguished by the patriotic deeds of men, whom knowledge, energy, and discretion, had eminently qualified to dispute the claims of the crown, to an unlimited and irresponsible authority. Such had been, too long, the extravagant pretensions of that royal race, which an absurd notion of hereditary right, the intrigues of Elizabeth's courtiers, in her declining years,* and the Queen's dying donation,† (as if aggrandizing the son, to atone for the

* See vol. iv. p. 135, *note*; "Memoirs of Robert Cary, Earl of Monmouth," (1759,) p. 187, *note*.

† This donation was, however, very equivocal. Robert Cary, Elizabeth's cousin, thus describes a scene, which he appears to have witnessed a few hours before the Queen's death:—

"On Wednesday, the 23rd of March, (1603,) she grew speechless. That afternoone, by signes, she called for her Councill, and by putting her hand to her head, when the King of *Scottes* was named to succeed her, they all knew hee was the man she desired should reigne after her." *Ibid.* p. 176.

The Earl of Corke, who edited these Memoirs, adds, "It still remains

mother's blood,) had entailed on the acquiescing people of England.

That people were too little prepared to entertain the comprehensive views of their more enlightened advocates, to profit by their wisdom or to estimate their deserts. Yet they bore right onward. Neither dismayed by adverse fortune, nor deluded into security by success, they had at length disarmed the despotism of the Crown, and practically applied the maxim, to which a Prince endued with the spirit of a Trajan,* would have listened without emotion, that "kings may be cashiered for misconduct."

a doubt, whether the Queen intended it for a sign or not. The Lords present pretended to think it one." See, also, the Preface, pp. xi. xii.

Thus a powerful people were regarded as a royal possession, to be made over, like quadrupeds, by a form of testament, not even nuncupatory, and insufficient to have conveyed a single acre.

* According to Bishop Burnet, the famous words of Trajan, when he "delivered the sword to the governors of the provinces, as the emblem of their authority, *Pro me: si merear, in me:* for me; but, if I deserve it, against me, were put on King James the First's coin, in Scotland, during his minority. When he afterwards changed his motto, the coin was not called in, but continued current till the Union." See "the Bishop of Salisbury's Speech in the House of Lords, on the first article of the Impeachment of Dr. Sacheverell," (1710,) p. 4.

This motto was, probably, recommended by Buchanan. It is quite in the spirit with which he presented to his royal pupil, the dialogue *De Jure Regni apud Scotos.* See the Dedication, *ad fin.*

Father Orleans is ludicrously indignant at "la patience" of James, (then only eleven years of age, and still under the rod of the preceptor,) in suffering "l'insolence de Buchanan, qui osa luy dedier un livre, où cet auteur soûmet les rois au jugement de leurs sujets." Yet had James imbibed the political wisdom, as well as the learning of his preceptor, he had been spared the contempt of posterity, and his son, blessed with such a father's counsel, and more powerful example, might have escaped the stroke of the executioner. The learned Jesuit calls

Among those statesmen and warriors, Oliver Cromwell had become conspicuous. He might still have maintained himself on that good eminence, beloved and honoured as the first of citizens. Allured by ambition, he seized the opportunity to seat himself on the throne of kings;* with most of whom, as a soldier or a sovereign, he could have been compared, only to enhance his reputation.

During six years of the period I have described, England and its dependencies were governed by the family of Cromwell. To those years, especially to preserve and illustrate what can now be recovered of their Parliamentary History, these volumes are devoted. I could not, however, have contemplated such an extent, when first preparing for the press the curious manuscript which has formed the principal part of this publication.

The Parliamentary Diary is ascertained, by various internal evidences, which will occur to the attentive reader, to have been written, in the House of Commons, by Thomas Burton, Esquire, M. P. for Westmoreland. It is now first printed from his original note-books, which came, a few years since, into the possession of Mr. Upcot, of the London Institution, (together with the lately published Correspondence of Henry Hyde, Earl of Clarendon,) and will be found to

Buchanan, "un homme de rien," though he cannot deny "qu'il étoit homme d'esprit." *Revolutions*, (1694,) iii. 14.

* The following cautiously worded paragraph, was the earliest notice of Cromwell's force on the Parliament, which has been justly regarded as the commencement of his sovereign authority :—

"April 20, 1653. The Lord General delivered in Parliament divers reasons wherefore a present period should be put to the sitting of this Parliament; and it was accordingly done, the Speaker and the members all departing. The grounds of which proceeding, will (it is probable) be shortly made public." *Mercurius Politicus*, No. 150, p. 238.

supply, to a considerable extent, the want of all Parliamentary Debates during the Protectorates.

Some part of this Diary had passed through the press, when I found in the British Museum, among the manuscripts there so liberally devoted to the advancement of literature and science, several speeches of the first Protector, apparently never printed. I also discovered a MS. volume, presented to the Museum by Mr. Tyrwhitt, the learned editor of Chaucer. This contained the diaries of Mr. Goddard, another member of the Protectoral Parliaments. In the following Introduction, I have preserved, verbatim, his summary report of the debates in the Parliament of 1654, and several Parliamentary papers; the existing printed notices of both, being few and very imperfect. Mr. Goddard's MS. has also enabled me to correct and complete, in numerous instances, Mr. Burton's report of the Parliamentary debates under the second Protectorate.

These valuable historical documents I have connected, by very concise notices of the more important political passages, during the intervals of Parliament; referring, in the notes, as led by the remarks or arguments of the speakers, to various events, chiefly political, through a period not less interesting, and more extended. The whole, indeed, of that portion of British history so long neglected, at first in compliment to the restored Royalty, has now begun to attract, among liberal-minded and judicious enquirers, the laudable curiosity, which its national importance always merited.

To an alphabetical list of speakers, with the places they represented, during the Interregnum, I purposed to have added some biographical notices. The pursuit of this design, which would form no unpleasing occupation, has been

abandoned; or, could I allow myself to presume on "life's futurities," postponed, as extending too far, and unavoidably delaying, the present publication.

It would have been difficult, nor indeed, has it been attempted, to conceal the opinions which I have been able to form, on the theory or administration of government; great questions, which, in the age of the Protectorates, as they must continue in every age, were intimately connected with the happiness and improvement of human society. I have also allowed myself to expose, with a freedom for which I should be ashamed to apologize, that time-serving versatility, too often discovered in the story of the period which these volumes are designed to illustrate. Yet, even if charged with a disposition to "extenuate nothing," I shall not, I trust, be found to have "set down aught in malice."

J. T. R.

Clapton, Jan. 25, 1828.



ILLUSTRATIONS.

VOL. I.

THE HOUSE OF COMMONS AS IN 1656.—FRONTISPIECE.

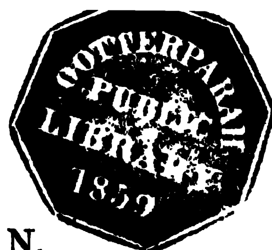
VOL. II.

FAC-SIMILE OF THE ORIGINAL MANUSCRIPT.—FRONTISPIECE.

VOL. III.

PLATE OF AUTOGRAPHS. FRONTISPIECE.

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INTRODUCTION.

April 20, 1653. The Lord General, having interrupted the Parliament, by an act of military violence, frequently described and censured in the ensuing pages,* proceeded to disperse the Council of State, unmoved by the just rebuke of their President Bradshaw.† He next convened a council of officers, with whose professed concurrence he nominated a legislative assembly,‡ who might afford to his sovereignty in possession, at least, the semblance of a Parliamentary authority. The debates in that assembly, are probably lost irrecoverably, if they were ever reported. From the journals, I select a summary of the Parliamentary proceedings.

Tuesday, July 5. Mr. Rous was called to the Chair.

Resolved, that some members of this House be sent to the Lord General, to desire him to afford his presence and assistance in this House, as a member thereof.

Wednesday 6. Resolved,§ that the title of Parliament be given to this Assembly.

Thursday 7. Resolved, that no person shall be employed, or admitted into the service of this House, but such as the House shall be first satisfied of his real godliness.

That the Lord General do sit as a member of the Council of State.

Saturday 9. The House took into debate the instructions formerly given to the Council of State, by Act of the 30th of November, 1652, in order to settling instructions for a Council of State.

* See vol. ii. pp. 397, iii. 56, 73, 98, 177, 209.

† See Mr. Godwin's "History of the Commonwealth," (1827,) iii. 456—458.

‡ See vol. ii. p. 67, *note;* iv. p. 499.

§ *Yeas* 65, *Noes* 46.

The eighteenth Instruction being read; the first clause, touching the Library at St. James's* was agreed.

Resolved, that the members now chosen to be of the Council of State, be authorized and required to act forthwith, according to the instructions now passed.

That a Committee be appointed to consider the affairs of Ireland; and are to meet at the Chair-chamber in Whitehall.

That there be a Committee named, to consider the affairs of Scotland; and are to meet at the House, commonly called the Lords' House.

Monday 11. The House spent this day in seeking the Lord, in a special manner, for council, and a blessing on the proceedings of Parliament.

Tuesday 12. Resolved, that a Committee be appointed to consider of the state of all the treasuries, and how a check may be put upon them; and to consider of any other matter, which may conduce to the advancement and best managing of the treasure of the Commonwealth.

Resolved, that the mace shall be made use of as formerly; and that the serjeant do also attend the Speaker for the time being, from time to time from the House, to the entrance into the old or new Palace; and there again receive him, and bring him to the House.

Ordered, that a Bible be provided for the service of the House.

Thursday 14. Resolved, that this Council of State now chosen,† shall continue till the third of November next.

The humble petition of John Lilburne, Esquire, now prisoner in Newgate, was this day read.‡

The question being put, that the House will suspend the proceedings in law, against Lieutenant-colonel John Lilburne, it passed in the negative.

* See vol. iv. p. 452, *note.*

† Among these were Mr. Montague and Sir Anthony Ashley Cooper.

‡ See vol. iii. p. 506, *note.* A petition was also presented in his behalf from "divers well-affected people, inhabiting the Cities of London and Westminster, the borough of Southwark, and places adjacent."

Friday 15. The House, this day, resumed the debate, touching the business of tythes.*

The question being propounded, whether the maintenance of ministers by tythes, shall be continued after the third day of November next.

And the question being put, that that question be now put, it passed in the negative.†

Wednesday 20. Resolved, that there be a Committee appointed to consider of public debts, and to receive accusations of bribery, public frauds, and breach of public trust.

That there be a Committee for prisons and prisoners.

That it be referred to the Committee for the law,‡ to prepare an Act for redress of delays and mischiefs, arising on writs of error, writs of false judgment, and arrests of judgment.

Thursday 21. Sir William Roberts reported from the Committee, the names of members of the House, to be of the Committee for the advancement of learning, and receiving all propositions tending thereunto;

Which were, upon the question, agreed unto.§

Ordered, that the business touching hospitals, be referred to the Committee for the Poor.

Resolved, that it be referred to a Committee, to consider of the removing all laws and ordinances, which are hindrances to the progress of the Gospel, and to report the same.

That it be referred to the Committee of the law.

Ordered, that no person or printer, do print or publish, any acts, orders, or proceedings of the Parliament; unless the same be first licensed, under the hand of the Clerk of the Parliament, to be printed by such person.

* See vol. iii. p. 483, *note* †, *ad fin.*

† *Noes* 68. *Yeas* 43.

‡ See vol. ii. p. 420, *ad fin.*

§ "Viz. Mr. Strickland, Mr. Sadler, Mr. Lawrence, Mr. Wingfield, [See vol. iii. p. 381, *note*:] Dr. Goddard, Colonel Barton, Mr. Spence, Sir Anthony Ashley Cooper, Colonel Sydenham, Alderman Tichborne, Colonel Montague, Mr. Lockhart, Sir Robert King, Colonel Blunt.

"Resolved, that Sir William Roberts, Mr. John St. Nicholas, Colonel Matthews, and Captain Cust be added to this Committee." *Journals.*

Friday 29. Mr. Speaker acquainted the House, he had received copies of credentials given from the Consuls and Senators of the city of Bremen, unto the Lord Henry Oldenburgh,* written in Latin, with the translation in English, which was now read.

Resolved, that the Deputy from Bremen, have audience by the Council of State; and that the Master of the Ceremonies communicate this note to the said Deputy.

Saturday 30. A letter from the Commissioners of the Commonwealth in Ireland,† dated at Dublin, the 22d of July 1643, with two papers of proposals, from the Council of the army in Ireland.

Mr. Anlaby reported from the Committee for prisons and prisoners, proceedings of that Committee, touching Sir John Lenthall, Marshal of the Upper Bench; and touching the state of that prison.‡

The humble answer of Sir John Lenthall, Knight, Marshal of the Upper Bench, was read.

Resolved, that Sir John Lenthall, shall be secured, to answer such matters, as shall be objected against him, on behalf of the Commonwealth.

That the Serjeant-at-Arms, do take the said Sir John Lenthall into custody, accordingly; and be authorized to take care of the prison of the Upper Bench.

Monday, August 1. Ordered, that it be referred to the Committee for inspecting the treasuries, and regulating officers and salaries, to consider how the Excise may be

* An intimate friend of Robert Boyle and Ray. He became Secretary of the Royal Society, and died in 1677. See Dr. Birch's "Life of Robert Boyle." p. 114. *Monthly Repository*, (1824,) xix. 28.

† Signed, "Charles Fleetwood, Edmund Ludlow, Miles Corbet, John Jones." It reports, "of the enemy, 20,000 lately transported, and about 7000 now transporting into foreign nations;" that "many counties are without inhabitants, and the whole country miserably wasted and destroyed." *Proceedings*, (1653,) pp. 16, 17.

There was, during Oliver's Protectorate, probably in consequence of the desolation, thus described by the Commissioners, a project for colonizing Ireland with foreign Protestants. See among the *Pell Papers*, "An extract of Mr. Rulice's Letter." *Lansdown MSS.* 755, No. 328.

‡ See *infra*, p. 5, *note*.

brought in with the greatest ease to the people, and how the oppressions and burdens which have been in the managing of that business, may be redressed for the future.

Ordered, That Sir John Lenthall, be required to deliver unto Serjeant Dendy, a true list of all the prisoners in the Upper Bench, with the causes of their imprisonment; and likewise, the books of the House belonging to the Paper Office.

Tuesday 2. The House being informed, that there were divers petitioners at the door, out of the City of London, Mr. Barbone and Captain Stone were sent forth.

Mr. Barbone acquaints the House, that the petition was in behalf of Lieutenant-colonel John Lilburne.

Resolved that the petitioners be called in.

Being come to the bar, six in number, one of them presented a petition, which, after they were withdrawn, was read, and was intituled "The humble petition of divers well-affected and constant adherers to the interests of Parliaments, and their own native fundamental rights and freedoms therein concerned, young men and apprentices, of the Cities of London and Westminster, Borough of Southwark, and the parts adjacent."

Resolved, that the petitioners be called in.

And the six persons which presented the petition being again called in.

Being come to the bar, Mr. Speaker, by command of the House, demanded of the first of them his name, he answered, their names were in the papers to the petition. He knew of the making of the petition. He was commanded by the rest of his friends and fellow-apprentices, not to answer any demands, but to demand an answer to this petition. And, thereupon, were commanded to withdraw.

Resolved that this petition is a most high breach of the privilege of Parliament.

That this petition is scandalous and seditious.

That these six persons, who brought in this petition, be forthwith committed into safe custody, and that the Serjeant-at-arms do forthwith take them into custody, and keep them apart.

That these six persons be again called in.

Mr. Speaker declared unto them, that the House had adjudged the petition to be scandalous and seditious; and had committed the petitioners.

Resolved, that this petition and this whole business, be referred to the Council of State, to examine the authors, subscribers, abettors, and printers of this petition.

That Lieutenant-colonel John Lilburne be kept close prisoner; and that the keeper of Newgate do take care the same be done accordingly.

Wednesday 3. Colonel Montague reported from the Council of State, a letter from General Monk, from on board the Resolution, off Camperdown, the 31st of July, 1653, which was read.

Ordered, that it be referred to the Council of State, to take especial care, immediately, for providing all necessaries for the relief and cure of the sick and maimed soldiers and seamen, wheresoever they be put on shore: and that they do also take care of the widows and orphans of those who are slain.

That the Council of State do signify unto the Counties of Essex, Norfolk, and Suffolk, that the Parliament hath taken notice of their great care, and tender respect, showed unto the sick and wounded soldiers and seamen put ashore in those counties, and their good resentment and acceptation thereof, and return thanks unto them.

Friday 5. The House, according to former order, took into consideration the business of the Court of Chancery.

Resolved, that the High Court of Chancery of England shall be, forthwith, taken away.*

That it be referred to the Committee of the Law, to prepare a Bill for this purpose, and report it to the House.

That it be referred to the same Committee, to consider how the causes now depending in Chancery may be determined; and, likewise, a provision for the determining in future matters of equity, and putting in order other matters of law, which

* See Mr. Brodie's "History of the British Empire," (1822,) iv, 357—360.

are within the jurisdiction of that Court; and forthwith to bring in a Bill for that purpose.

Saturday 6. Ordered, that it be referred to the Committee for the Poor, and justices of the peace, to consider of and examine the breach of the privilege of Parliament in new books, or pamphlets; and also to consider of the abuse in printing of scurrilous ballads and pamphlets, and seditious books and papers; and to examine who were the writers, printers, and publishers thereof; and wherein the former laws are defective, to offer some further remedy for the redress of that abuse.

Monday 8. Resolved, (on Mr. Moyer's report from the Council of State,) that two gold chains, to the value of 300*l.* apiece, be made and given to General Blake and General Monk, as a mark of favour from the Parliament, and a token of their good acceptance of the eminent services performed by them against the Dutch: and that a chain to the value of 100*l.* be made and given to Vice Admiral-Penn, and one of the same value to Rear-Admiral Lawson; upon the same consideration.

That the four flag officers have chains given them, of 40*l.* apiece: and that the former sum of 960*l.* be made up 2000*l.* to be given in medals amongst the officers of the fleet, as a mark of the Parliament's favour, and good acceptance of their service, in such manner as the Commissioners of the Admiralty, by advice with the generals of the fleet, shall think fit.

Wednesday 10. Ordered, that the vote of this House, of the 2d of August, instant, for the close imprisonment of Lieutenant-colonel John Lilburne, be taken off, in order to his trial.

Mr. Moyer reported from the Council of State, that the Council, having daily intelligence of many designs that are on foot, in this Commonwealth, on the behalf of Charles Stuart; and that very many considerable persons are engaged therein, some whereof are ordered to be apprehended; do think it necessary, for the safety of the Commonwealth, that a High Court of Justice be erected.

Ordered, and that the Council of State do bring in an act, with the names of Commissioners to be inserted therein.

Friday 12. A Letter from the Queen of Sweden, dated at Stockholm, the 18th of May, 1653, on the behalf of the Lord Hieronimus Radsciovice, Senator and Pro-Chancellor of Poland, was read.

Monday 15. Major General Disbrowe reported from the Council of State, the humble petition of some of the inhabitants of Gloucestershire, concerning the planting of English tobacco, which was read.

Resolved that three pence upon every pound of tobacco planted in the county of Gloucester, shall be paid by the planters to the use of the Commonwealth.

Tuesday 16. A letter from the apprentices committed, was read.

Resolved, (on the report of Colonel Tichborne from the Council of State,) that Mr. Richard Lawrence be agent from this Commonwealth to Constantinople, and that the House doth agree to the instructions.

That the House doth approve of the letters to be sent to Sir Thomas Bendysh; to the Grand Signior, and the Vizier.

Mr. St. Nicholas reported from the Council of State, the examinations which were by them taken, of the persons who lately delivered to the Parliament a Petition, on the behalf of Lieutenant-colonel John Lilburne, which were read.

Ordered, that the said persons who are now in the custody of the Serjeant-at-arms, by order of this House, be committed to Bridewell, London, there to remain, and be kept to hard labour, during the pleasure of the Parliament.

Friday 19. The House resumed the debate of yesterday touching the law.

Resolved, that the Committee of the Law do proceed with the regulation of the Law.

That there shall be a Committee appointed to consider of a new body of the law.

A letter from General Monk, Vice-Admiral Penn, and Rear-Admiral Lawson, dated on board the Resolution, in Aldborough Road, the 17th of August, 1653, was read.

Ordered, that the Judges for probate of wills do take care that the wives, executors, and administrators of private sol-

diers and mariners, slain or dying in the Parliament's service, be admitted to make probate of the wills, and sue out letters of administration, of such soldiers and seamen, *gratis*, without fees.

Monday 22. Mr. Speaker acquainted the House, by way of report, that there have been presented unto him, letters to the Parliament, from Frederic, heir of Norway, Duke of Sleswick, Holstein, Stormaine, and Ditzmatz, Count of Oldenburgh and Dolmenherst, dated at Gottorp, the 7th of July, 1653; being letters credential to Colonel Paul Wirtz, together with the copies of the said letters credential, both in English and Latin, which were now read.

Resolved, that it be referred to the Council of State, to give audience to the said public minister; and to hear what he hath to offer, and make report to the Parliament.

That Sir Oliver Fleming, Knight, Master of the Ceremonies, do acquaint the said public minister herewith.

Colonel Rous reported from the Committee for petitions, the humble petition of the several companies of the City of London.

Ordered, that the said petition be referred to the Committee for Ireland, to examine the whole matter, and report the true state thereof, with all convenient speed.*

Ordered, that the Council of State be authorized and required to examine the whole business of the late trial of Lieutenant-colonel John Lilburne, and the proceedings therein; and particularly to examine the judges and jury; and to report the state of the whole matter-of-fact, to the House, with all speed.*

That the Council of State be likewise required to examine, touching any scandalous, seditious, or tumultuous papers, which have been dispersed; or words spoken at the said trial, or in relation thereunto, in derogation of the authority of Parliament.

Resolved, that on Friday next the House do take into consideration the business of religion.

* See "View of the Irish Society," (1822,) p. 62.

Tuesday 23. Resolved, that Alderman Ireton, &c., be a Committee, to consider of all such houses as belong to the Commonwealth, in and about London and Westminster; and to assign convenient lodgings therein, to all the members of the House.

Friday 26. The House, according to former order, took into consideration the business of religion.

Resolved, that a Committee be appointed to consider of some way to be propounded to the House, how ignorant, profane, and scandalous ministers may be rejected; and for the encouragement of such godly and able persons as shall preach the Gospel. Referred to the Committee for Tythes.

Saturday 27. Sir Anthony Ashley Cooper reported from the Council of State, on the business of the late trial of Lieutenant-colonel John Lilburne.*

Ordered, that it be referred to the Council of State, to take some course for the further securing Lieutenant-colonel John Lilburne, for the peace of this nation.

Friday, September 2. Mr. Speaker acquainted the House he hath received copies of letters from the Duke of Guelders and Juliers, Count of Egmont and Zutphen, dated at Saint Cloud, near Paris, 26th of August, 1653, being credentials to Monsieur Lodowick de Grand, Lord of Brachey.

Resolved, that these letters be referred to the Council of State, to consider what is fit to be done herein.

Saturday 3. The humble petition of the young men and apprentices, who are in the prison of Bridewell by an order of Parliament, was this day read.

Monday 5. That for ten days, to begin on Thursday next, the House do take into consideration the business of money; and no other business to intervene.

Tuesday 6. A letter from the Great Duke of Tuscany, dated at Florence, the 2d of August, 1653, was read.

Ordered, that this letter be referred to the Council of State, to take notice thereof, as there shall be occasion, upon any transactions between this Commonwealth and the said Grand Duke of Tuscany.

* See vol. iii. pp. 506, 507, *note*.

Friday 9. Colonel Matthews reported from the Committee for Petitions, the humble petition of divers inhabitants of the parish of Barking, in the forest of Waltham, in Essex; together with the humble opinion of the Committee.

Ordered, that one acre of ground, in some convenient place, near the petitioners' dwellings, be assigned within the said forest, whereon to build a house for a meeting-place; and that twenty timber trees be also set out of the said forest, towards the building thereof; and that Colonel Matthews and Mr. Brewster do see the said ground and trees assigned, and set out accordingly; and that a Bill be brought in to this purpose.

Monday 26. Sir Anthony Ashley Cooper reported, that he had acquainted the Lord General with the offer of this House, touching the exchange of Hampton Court for New Hall,* according to the order; who returns his humble acknowledgment for the great respects of the House towards him therein; and his desires that the House would proceed to dispose thereof, according to their former resolution.

Ordered, that the house called Hampton Court, with the out-houses and gardens thereunto belonging, and the little park wherein it stands, be stayed from sale, until the Parliament take further order.

Saturday, October 1. General Monk, one of the Admirals at sea, came into the House, and took his place as a member.

Mr. Speaker did give him thanks for his great and faithful services to the Parliament, and this Commonwealth.

Monday 3. Colonel Rouse reported from the Committee for Petitions, a Bill touching idiots, lunatics, and infants. Read the first and second time, and ordered to be ingrossed.

Tuesday 4. Mr. Lawrence reported from the Council of State, the draft of a letter to be sent to the Protestant Cantons of Switzerland, which was read.

* Thirty-two miles from London, on the Harwich Road. Scarcely any place has been more variously occupied; from the Monks of Waltham to General Monk, who purchased it out of the royal reward of his treachery to the Commonwealth. See vol. iii. p. 323, *note*. Morant's *Essex*, ii. 13—15; *Monthly Repository*, (1808,) ii. 536, *note* †.

Resolved, that it be referred to the Council of State, to cause this letter to be translated into Latin; and that the same being so prepared, be signed by the Speaker, and sealed with the seal of the Parliament.

Saturday 8. The House being informed that the Lord Mayor elect was at the door: according to the order of the House, by command of the House, he was called in, and presented by Mr. Proby, Common Serjeant of the City of London, and divers Aldermen.

Resolved, that the Parliament doth approve of the election of Alderman Thomas Vyner, to be Lord Mayor of the City of London, for the year now next ensuing, and that he be sworn accordingly.

Monday 10. General Blake, one of the Admirals at sea, came to the House, and took his place as a member.

Resolved, that General Blake have the thanks of this House, for his great and faithful services to the Parliament and this Commonwealth.

Mr. Speaker did, accordingly, give unto General Blake, the thanks of the Parliament.

Tuesday 11. Mr. Lawrence reported from the Council of State, instructions for Bulstrode Whitlock, Constable of the Castle of Windsor, and one of the Keepers of the Great Seal of England, Ambassador Extraordinary from the Parliament of the Commonwealth of England, to the Queen of Sweden, which were read, and, upon the question, agreed.

Mr. Lawrence also reported the coming forth of several scandalous and seditious pamphlets: one a paper intituled, "A Charge of High Treason exhibited against Oliver Cromwell, Esquire, for several Treasons by him committed," which was now read.

Saturday 22. Resolved, that no Committee of Parliament, nor the Council of State, do sit after eight of the clock in the morning; but that the members of this House be enjoined to meet in the House every morning, at eight o'clock.

Wednesday 26. Mr. Strickland reported from the Committee, appointed to receive and give audience to the Lord

Lagerfeldt, Public Minister of the Queen of Sweden, that the said Lord Lagerfeldt did make a discourse unto them in Latin; a copy whereof he delivered, both in Latin and English, together with a letter from the Queen of Sweden, directed, *Parliamento Reipublicæ Angliæ.*

Friday 28. Mr. Strickland reported from the Council of State, a proclamation prepared to be published, concerning the business of the tumult made by the seamen yesterday, at Charing-Cross.*

Saturday 29. The House being informed, that the Lord Commissioner, Whitlock, Lord Ambassador from the Parliament of the Commonwealth of England, to the Queen of Sweden, was attending the pleasure of the House.

Resolved, that Mr. Speaker do deliver unto the Lord Ambassador Whitlock his commission, letters, credential, and instructions, in order to his embassy.

The Lord Ambassador was accordingly called in; and being attended by the Serjeant-at-Arms, came up to the Clerk's table.

Mr. Speaker, by command of the House, did deliver unto him his commission under the Great Seal of England, letters credential to the Queen of Sweden, and his Lordship's instructions; which having received, and the performance of mutual civilities, departed, attended by the Serjeant.

Tuesday, November 1. Resolved, that Friday, in every week, be set apart for business of the law.

That it be referred to the Committee of the Law, to bring in a Bill for taking away holidays, and the observation of those days which are not juridical.

That two hours be spent, on Saturday next, in prayer and hearing; and the House adjourned from Friday to Monday.

That Mr. Marshall be desired to preach at Margaret's, Westminster, on Saturday, the 5th of November.

The House proceeded to the election of members for the Council of State, to continue for six months.

Monday 14. A letter from the Burgomasters and Senators of the Free Imperial City of Lubeck, was read.

* See vol. ii. p. 78, *note* *.

Another letter, from the Senate of Hamburgh, was read.

Ordered, that these letters be referred to the Council of State, to prepare such answer to be given to them, as they shall think fit.

Thursday 17. Resolved, that the power of patrons to present to benefices, shall, from henceforth, be taken away; and that a Bill be brought in for that purpose.

Monday 28. Ordered, that it be referred to the Committee for the Poor, to consider of the business, where inclosures have been, or shall be made; how there may be a prevention of depopulations and decay of tillage; and offer to the House what they shall think fit to be done therein.

Thursday, December 1. Mr. Lawrence reported from the Council of State, letters of safeguard, to the Prince Frederic, Heir of Norway, Duke of Sletia, Holstein, &c. which were now read in Latin and English, and agreed; and Mr. Speaker ordered to sign the same, and that it be sealed with the seal of the Parliament.

Ordered, that Sir William Roberts, and Mr. Squib, examine the person who stood at the door with a naked knife.

Friday 2. Mr. Speaker acquainted the House, that he had received a letter from the Proconsul and Consuls of the city of Dantzic. Read, and referred to the Council of State.

Monday 12. It being moved in the House this day, that the sitting of this Parliament any longer, as now constituted, will not be for the good of the Commonwealth, and that therefore it was requisite to deliver up unto the Lord General Cromwell, the powers which they received from him; and that motion being seconded by several other members, the House rose.

And the Speaker, with many members of the House, departed out of the House to Whitehall, where they, being the greater number of the members sitting in Parliament, did, by a writing under their hands, resign unto his Excellency their said powers; and Mr. Speaker, attended with the members, did present the same unto his Excellency, accordingly.*

* See Dr. Bates's *Elenchus*, (1676,) p. 271; Ludlow's *Memoirs*, (1698,) ii. 474, 475.

This surrender of the Parliament's authority, by whatever management it had been produced, the Lord General accepted with becoming expressions of surprise and regret; even at that time, probably, not ill understood. For this unexpected event, he was so fully prepared, that four days after, a complete and comprehensive Instrument of Government,* indebted, no doubt, to his skill and contrivance, was ready for his acceptance. Amidst a grand ceremonial, the Lord General was inaugurated Lord Protector of England, Scotland, and Ireland; and thus proclaimed, by sound of trumpet, in the metropolis, and throughout England.†

Addresses to "the powers that be," were now abundant; and the Corporation of London, ever ready to improve their vicinity to a Court, flattered and feasted the Sovereign Protector;‡ as if again blessed with the presence of royalty.

* See *Parl. Hist.* (1763,) xx. 248—262. † *Ibid.* p. 265.

‡ "Feb. 8. His Highness, very nobly attended by his Council and the officers of the army, his own life-guard, and many persons of honour, was met by the Lord Mayor and Aldermen, his brethren, at Temple-bar, where his Highness, alighting out of his coach, took horse.

"The Recorder presented the sense and duty of the City in an eloquent speech. The streets were railed all along from the Temple with seats, wherein sate all the companies of the City, in their livery-gowns, as far as Grocers' Hall, which was the place appointed to feast his Highness. Being come in, the Recorder made another speech, but more brief, to let his Highness understand, how happy the City were in the enjoyment of his person.

"After he had done, his Highness, having retired himself awhile above-stairs, came down to dine in the great hall, where he sate in the middle of a long table; his son, the Lord Henry on the left hand, and the Lord Mayor on the right; and on each side of them the Council, with General Monk, Commissary-general Whalley, and Mr. Claypole, Master of the Horse to his Highness; being entertained, besides cheer, with music, voices, drums, and trumpets. After this, his Highness was conducted up-stairs again, by my Lord Mayor, to a noble banquet. This being done, his Highness departed, being played out by hautboys and other loud music." *Mercurius Politicus*, No. 191.

"8 Feb. Ash-Wednesday. In contradiction to all costome and decency," says Mr. Evelyn, "the usurper, Cromwell, feasted at the Lord Maiors, riding in triumph thro' the citty." *Diary*, (1827,) ii. 67, 68.

A more powerful aid to his reputation was the conclusion of a peace which the Dutch had solicited.* This event, which naturally tended to conciliate the people, while reviving the energies of the merchant and the artizan, was recorded by the medallists of Holland,† and celebrated by Oxford's learned sons.‡

The Protector had now ruled for several months, by a Council, which emanated from his will, and was little more than a register of his edicts. He next prepared to call a Parliament, as directed by the Instrument; thus submitting to the discussions of a representative assembly, the authority and the administration of the new Government.

* See vol. iii. pp. 391, 484; *Mercurius Aulicus*, No. i. p. iii.

† See Raquenet's *Histoire D'Olivier Cromwel*, (1691,) ii. 146—153.

‡ South, not yet privileged to insult, now sang:

"Tu poteras solus motos componere fluctus,
Solus Neptunum sub tua vincla dare.

You only could the swelling waves restrain,
And lay your fetters on the conquer'd main."

Another student of Christchurch, who never sang his *palinodia*, besides English verses, thus complimented the Protector:—

"Pax regit Augusti, quem vicit Julius, orbem
Ille sago factus clarior, ille togâ.
Hos sua Roma vocat magnos, et numina credit,
Hic quod sit mundi victor, et ille quies.
Tu bellum ut pacem populis das, unus utrisque
Major es: ipse orbem vincis, et ipse regis.
Non hominem è cœlo missum te credimus; unus
Sic potens binos qui superare Deos!"—J. Lock, *ex Æde Christi*. See *State-Poems*, (1697,) pp. 6—8, 12, 13.

Augustus in pacific glory sway'd
The world, that Julius' conquering arms obey'd.
One by his sword achiev'd a mighty name;
And one the meed acquir'd of civic fame.
Applauding Rome proclaim'd them deities:
This for wise rule; and that for victories.
Thou, sovereign Prince, to both superior far,
Guiding in peace the world thou'st gain'd by war!
From Heav'n we hail thee, of no mortal race,
Who canst alone two deities surpass!

OLIVER'S second Parliament began 3d of September, 1654-5. Dissolved 22d of January, 1654.

Saturday, September 2. Being returned a burgess for the Parliament, together with Major-general Skippon, for the borough of King's Lynn, and the Parliament being to begin the 3d of September,* which fell out to be the Sabbath-day, I came up to London upon that service the day before, being Saturday, the 2d of September; and in order to the service I came about, I was informed that I was to receive a ticket from the Clerk of the Commonwealth in Chancery, certifying the approbation of my election, which, accordingly, I received upon that day.

Sunday 3. We met in the House, according to our sum-

* "I believe," says *Hobbes*, "he was a little superstitious in the choice of September 3, because it was lucky to him in 1650 and 1651, at Dunbar and Worcester; but he knew not how lucky the same would be to the whole nation, in 1658, at Whitehall." *Behemoth* (1682) p. 302; Baron Maseres's *Tracts*, (1815), ii. 632. See vol. ii. p. 346, *note.*

"Westminster, September 3. This day, being the Lord's day, the new representative met in the Temple of the Lord, in the Abby; and the first work they began was, to seek the face of the most high God, and eternal Protecter of Heaven, by prostrating themselves before him, in his divine ordinances, for a blessing upon all their actions and undertakings. Mr. Rocket preached in the forenoon, and Mr. Marshall in the afternoon. After sermon [from Hosea xii. 3, 4.] being ended, the honourable members met in the Parliament House, (the Lord Bradshaw being one of the first that led the way from the Abby,) where they proceeded to the election of a Speaker, (being the usual work first insisted upon;) and those in nomination were, the Lord Bradshaw and Mr. Lenthal.

"And after half-an-hour's time spent in debate thereof, his Highness sent for them into the Painted Chamber, where they all retired by way of congratulation, being about 300 in number; and immediately upon their entering in, his Highness rose out of the chair of state, and saluted them with a most excellent, (but short,) speech; declaring, that 'he desired the spirit of union might go along with them, and that the work of the Lord might be effectually carried on, for the peace and tranquillity of all the saints in Sion.' Withall, he gave them to understand, that he 'would attend them between 8 and 9 of the clock, the next morning, in the Parliament House;' and so he withdrew, and went in his barge to Whitehall." *Faithful Scout,* (1654,) No. 195, p. 1554.

mons, and there was an appearance of above three hundred members. But we met not there until after evening sermon, which was preached in St. Margarett's, Westminster, by Mr. Marshall.

About four or five of the clock, when the House grew pretty full, some discourse was moved (not concerning the lawfulness of our meeting on that day,) but how far it might be lawful (being met) to sit upon that day, by the word of God: and some, through pretence of conscience, other some, through impatience, would presently have risen and adjourned; (as if the very adjournment had not been as sinful an accommodation, as any they could do,) but General Lambert coming into the House, and acquainting them, that his Highness the Lord Protector was in the Painted Chamber, and expected us there, to speak with us, it broke off those little discourses, and the House, (though some cried "sit still,") went to attend his Highness's pleasure.

Where being come, and his Highness standing bare upon a state raised for that purpose, he only told us, that we were summoned to meet as the Parliament of the three nations, upon that day: but, in regard of the day there was little of business that could be then done.* He therefore desired that the next day, being Monday, we would meet him, first, at a sermon in the Abbey Church, and after that, in the same Painted Chamber, where he would then communicate such things as he had in his thoughts to communicate to us, and so dismissed us.

After which, we returned to the House, and without more doing, adjourned till the next morning.†

Monday 4. We met at the Abbey Church, the Lord Protector being attended with three maces, and the sword of state, which was carried by General Lambert.‡

* "This being the Lord's day, which was not to be taken up in ceremonies." *Journals.*

† "Eight of the clock; Mr. Gewen standing in his place, and, by general consent of the House, pronouncing the adjournment." *Journals.*

‡ "Some hundreds of gentlemen and officers," says *Whitlock*, "went before, bare, with the life-guards, and next before the coach, his pages

Mr. Thomas Goodwin,* a native of Lynn, preached the sermon. After sermon we met, according to former appointment, in the Painted Chamber, where the Lord Protector, in a full discourse,† set forth the condition of the nation, both in civil and ecclesiastical concernments, before this last change of the Government; what had been done and effected since, and what more may be desired to be done, in order to a firm and settled foundation of future establishment, which, he plainly intimated, could not be expected or hoped for, either from the Levellers,‡ who would introduce a party in civils, nor from the Sectaries, who would cry down all order and government in spirituals;§ and concluded with some gracious expressions, which gave satisfaction and applause, in general.

This being done, he gave a freedom to choose a Speaker.||

and lacqueys, richly clothed. On the one side of the coach went Strickland, one of the council, and captain of his guard, with the master of ceremonies, both on foot; on the other side went Howard, captain of the life-guards. In the coach with him was his son Henry, and Lambert. Both sat bare. After him came Claypole, master of the horse, with a gallant led horse, richly trapped. Next came the Commissioners of the Great Seal, and of the Treasury, and divers of the council in coaches, and the ordinary guards.

"He alighting at the abbey door, the officers of the army and the gentlemen went first, next them, four maces. Then the Commissioners of the Seal, I carrying the purse. After, Lambert, carrying the sword, bare, the rest followed. His Highness was seated over against the pulpit, and the members of Parliament on both sides." *Memorials*, p. 582.

* See vol. iii. p. 1.

† "All being silent," says *Whitlock*, "his Highness made a large and subtle speech to them." *Memorials*, p. 582.

"Bordeaux, the French Ambassador, to Count De Brienne. It was observed, that as often as he spoke of liberty and religion, the members did seem to rejoice, with acclamations of joy." See "Thurloe State Papers," ii. 588.

‡ Whom he thus grossly misrepresented: "Did not that levelling principle tend to the reducing all to an equality? What was the design but to make the tenant as liberal a fortune as the landlord." *Parl. Hist.* xx. 321. See *infra*, pp. 49, 383. *notes* ‡ §.

§ *Parl. Hist.* xx. 322, 323.

|| "His Highness made unto them a large narration of the grounds of their being called together, and the weightiness of their employment,

Whereupon, we returned to the House, and set first upon that work. But Mr. Scobell, who had received a patent from the old Parliament, to be Clerk during his life, and the Serjeant at the Mace, being then both in the House, it was thought fit that they should first be ordered to withdraw the House, and not to come in upon any pretence of title, until they were chosen and commanded by the House.

They being withdrawn accordingly, the House applied themselves to the choice of the Speaker. The first man named, was Mr. Lenthall, the same that had served the Parliament so long before, in the same employment.* Something was said to excuse him, by reason of his former services, and something objected, as if he had served so long, that he had been outworn. But, in fine, in regard of his great experience and knowledge of the order of that House, and dexterity in the guidance of it, he was unanimously called to the Chair, and two members were desired to attend him to it.

That being done, the House made choice of their Clerk and Serjeant, which were the same that were ordered before to withdraw, and an admonition given to the Clerk for his former presumption, to intrude into that place before he was chosen,† the House generally disallowing of all patent officers in that House.

The mace was also ordered to be brought in by the Serjeant, as a necessary concomitant.

The next thing done was to appoint a fast, which was ordered accordingly, at the Church, the place of public worship, some being of a different judgment.‡

That being settled,§ and an Act read, (according to ancient Order,|| whereby the House stood possessed,) which Act was against the election of officers taking place upon the Sabbath-

and then desired them to repair to their House, and exercise their own liberty in choosing their Speaker, that they might lose no time from their great business." *Journals.* See *Parl. Hist.* xx. 318—333.

* See vol. ii. p. 29, *note.*

† See his excuse and submission. *Journals.* vii. 365.

‡ See vol. iii. pp. 12, 13.

§ See *Whitlock*, p. 583.

|| See vol. iii. p. 4, *note* §.

day, and against fairs and markets kept, or published upon that day, the House adjourned until the next day, at eight of the clock.

Tuesday 5. The House met, and first called over all their members, and then the defaulters, of which there were not above threescore, of such as were returned.

After that, they fell, according to order, to make their Committees; the first of which, was that of Privileges, which being made, and their names read, some occasion was taken by some members to tell us that, until that time, they had not so much as heard the name of my Lord Protector within those walls, and intimating, as if there had been some reflections upon the Government, which, although it were an occasion not so well taken, nor so seasonable at that time, yet, being a matter conceived necessary in order to a right understanding at first, especially in that which they conceived to be a foundation, and not to be denied; they therefore, (from Court, especially, and from the soldiery and lawyers,) pressed hard, that the Government, or Instrument of Government, might be speedily taken into consideration, and some return made to my Lord Protector, of thankfulness for his late speech.

The debate concerning those things held until three of the clock, the other part affirming the motion was out of order, in regard by the ancient orders, Committees, especially their general Committees of Privileges, which concern the being, and of religion, grievances, and courts of justice, which concern the well-being of the Parliament, ought, in the first place, to have been settled. And, in truth, it was thought a little too precipitate, in regard it was in the infancy of the Parliament, before the House was full, or the members come up, to propose a thing of that weight, which, probably, was the greatest which could fall before us in judgment. And, besides, it was to anticipate the fast, and in a manner to mock God, that having appointed that solemnity on purpose to seek God's direction and council in these weighty affairs of the nation, which should come before us, especially in the establishment of them upon sure foundations, we should first lay the main foundation without him, and then ask his counsel.

Notwithstanding it was voted in the affirmative, both that the question should be put for putting of the question; and that the Government should be the first business should be taken into consideration the next morning.*

The same day, in the afternoon, I attended the Committee of Privileges, of which myself was one,† where, according to former orders, double returns and indentures were first called upon, and the indentures ordered to be brought in by the Clerk of the Chancery, the next day, and some petitions were read.

Wednesday 6. The House being met, and the order for taking the Government into consideration being first read, it was moved by some, that there was something that lay in the way which might hinder the freedom of that debate, namely, an Ordinance, so called, made by the Lord Protector and his council,‡ whereby it was made High Treason for any man to speak against the present Government.§

Which occasioned many discourses concerning the freedom of speech in Parliament, it being alleged, that that was the first-born privilege of Parliament, and the very heart-strings of it. In fine, it was so allowed on all sides, and that no law or power from without could impeach any member, for any syllable spoke within those walls, and that those precedents of Queen Elizabeth's, King James's, and the late King's times, were all illegal, and not to be drawn into a law.

* See *Journals*. † See *ibid*.

‡ "Ordered" to "be forthwith printed and published, January 19, 1653-4."

§ "If any person or persons shall maliciously or advisedly, either by writing, printing, openly declaring, preaching, teaching, or otherwise, publish that the Lord Protector, and the people in Parliament assembled, are not the supreme authority of this Commonwealth, or that the exercise of the chief magistracy, and administration of the Government, over the said countries and dominions, and the people thereof, is not in the Lord Protector, assisted with a council: Then every such offence shall be taken and adjudged to be High Treason." *Ordinances*, &c. "Printed by William Du Gard and Henry Hills, Printers to his Highness the Lord Protector." 1653, pp. 60, 61. See *Parl. Hist.* (1763,) xx. 269, 270.

But if any thing be spoken amiss, it must be questioned by the House, and in the House only, and that, presently, before any other debate intervene; yet not before such member hath fully concluded his speech; because, probably, what one shall speak in one part of a speech, he may either qualify or interpret, in another part.

But yet it was moved, for some men's securities, and to satisfy their jealousies and fears who received any umbrage from that Ordinance, that it might be declared by the House, that, notwithstanding that Ordinance, the House was free to debate the Government. But it was objected, that to question their freedom would be to lose it or to weaken it, and to question that which was never doubted, but attested by the known law and privilege of Parliament, and therefore, could not be strengthened by such a declaration as was desired. Which, if in truth any would offer to impeach, by violence from without, it could receive no sanctuary nor advantage at all from such a declaration. Therefore, after many hours' debate, that being put to the question, whether such a Declaration should be made by the House, it was carried in the negative by the major vote. The House being divided, above one hundred and eighty were for the negative, and about one hundred and thirty for the affirmative.*

That being settled, the House would have fallen upon putting the main point of the Government to the question, but that was overruled, in regard it had not received its full debate. Then it was pressed, that the debate might presently be entered into, but, in regard it was then three of the clock,† the House were of opinion to enter no further into the debate of it that day, but only so far as to possess the House, that so, when it should come on the next day, by adjournment, nothing might interpose to interrupt it. Which being agreed unto, and the question stated, namely, whether the

* "*Noes*, 187. Colonel Fiennes and Lord President Lawrence, Tellers. *Yeas*, 130. Sir Arthur Haslerigge and Mr. Scot, Tellers." *Journals*.

† See *infra*, p. 36, *note*.

Government by a single person and a Parliament, should be approved of, the House, for that day, adjourned.*

In the afternoon, at the Committee of Privileges, the case of the double election for Yarmouth was considered of; and the next day appointed them.

Thursday 7. This day, the House being met, it was propounded, that for the freer debate of the great question, stated the day before, the House might be turned iuto a Committee of the House, which was strongly opposed, and being put to the question, it was carried in the affirmative.†

Mr. Nathaniel Bacon had the chair, the House being resolved into a Grand Committee.

The debate of the main question was taken up and continued from eight or nine o'clock in the morning until about seven of the clock the same night, and adjourned over, until the

* "Some consideration," says *Whitlock*, (Sept. 6,) "was had in the House, touching the privilege of the Parliament in their freedom of debate. Then, the Lord Protector's speech to them was taken into consideration, and, amongst the particulars thereof, the foreign negociations were mentioned, and particularly that of Swedeland.

"Which caused me to make the following relation :—

"After I had spoken, the House gave a general applause, and divers of them stood up and moved, that I might have the public thanks of the House, for the good service done, in this hazardous and important business.

"Then the Lord Broghill spake much in commendation of the treaty, and of the ambassador, and seconded the motion." *Memorials*, pp. 583—587. See *Parl. Hist.* xx. 335—347.

This transaction is not mentioned in the *Journals*. In 1772 was published, in two volumes, quarto, "A Journal of the Swedish Ambassy, in the years MDCLIII. and MDCLIV. From the Commonwealth of England, Scotland, and Ireland. Written by the Ambassador, the Lord Commissioner Whitelocke, with an Appendix of original papers."

† "*Noes*, 136. Sir Charles Wolseley and Mr. Strickland, Tellers. *Yeas*, 141. Serjeant Bradshaw and Colonel John Birch, Tellers. *Journals*.

"Many persons," says *Ludlow*, "of known virtue and integrity, were chosen to sit in this assembly, in particular the Lord President Bradshaw, Sir Arthur Haslerigge, Mr. Thomas Scot, Mr. Robert Wallop, and divers others." *Memoirs*, (1698,) ii. 498.

next morning. The Long Parliament, an Iron* Parliament, a Trading *Parliament.

Much debate was about the word "approving" in the question, as if it were not Parliamentary, nor for the honour of the House, to approve of any thing which takes not its foundation and rise from themselves.

It was pressed, likewise, that there might be a transposition of some few words. Instead of "a single person and a Parliament," they would have "the Parliament" preferred, and the words stand, "that the Government should be in the Parliament of the people of England, &c.; and a single person, qualified with such instructions as the Parliament should think fit." Which last words were exceedingly pressed to be added; and plainly, the generality of voices and sense of the House seemed to incline that way.†

Friday 8. The House this morning, with great difficulty‡, adjourned itself into a Grand Committee, about the debate of the former question, Mr. Bacon being again called to the Chair. The arguments were high and hot; and plainly there was a receding from former principles on all hands.

Those who argued for the Parliament alone, and the freedom and privileges of Parliament, had been the greatest and highest infringers of the freedom and privileges of the Great and Long Parliament of any;§ and those who argued highest for the single person, and the Parliament, were such, and almost only such, as had fought and aided the greatest things that ever were acted in this nation under the contrary principle; namely, under the power of the Parliament alone; and that not only when there was a king in being, and without his consent, but expressly contrary unto it.

But the differences seemed so wide, the contest so hot, and the struggling so violent on both sides, as there seemed

* "Epithets, probably, employed in this debate.

† See vol. ii. p. 395, *note*.

‡ Yet there was no division. See *Journals*.

§ In the margin, "Mr. Scot, Sir Arthur Haslerigge."

hitherto no hope of any fair agreement. And, indeed, the soldiery and courtiers, by whom the single person's interest was chiefly carried on, did not forbear to speak it out; that there was a necessity for it; it must be so; and that though many fair words were given my Lord Protector, yet it could not be expected that he would lay down his sword, and subject himself to the will of a Parliament, wherein he should be denied equal power and co-ordination, or to that effect.

This debate having continued until seven of the clock in the evening, with an adjournment for an hour at noon to refresh ourselves, was then broke up; and the House adjourned until next morning, at eight of the clock.

Saturday 9. The House being met, with some dispute it was adjourned again into a Grand Committee; the Court party persisting hard to keep it in the House.*

It now began to be visible, that the interest of the single person did plainly lose ground; for not only the word "approved" was disrelished on all hands, but they began to break the question, and to distinguish the word "Government" into the legislative power and the executive power. The first was generally thought, with all the reason in the world, to be the right of the Parliament alone, without communicating the least part of it to any single person in the world. This they conceived was the ancient right and fundamental privilege of the people.† But, as to the executive part of it, that was conceived communicable; and indeed, not exercisable by the Parliament.

Therefore, there seemed to be a general intimation, to invest that single person with that, and with such amplifications of honour and other qualifications, (though not without restrictions in that too,) as might render him very conspicuous to the world, and testify the great obligations which the English nation had to his virtues.

These words were extremely catching to the generality of the House, and seemed to have so much of reason with them,

* Yet no divison. See *Journals*.

† See vol. ii. p. 451, *note* §. iii. 319, *notes*.

as could not rationally be gainsayed. Only, for the prevention of some few mischiefs, as perpetuating of Parliaments, and the present disposing of the militia, the Court party did conceive in these respects, it might be necessary to have a check, as they called it, upon a Parliament; and that some single person should be admitted into co-ordination, at least, in things with the Parliament, which seemed not then to be much opposed. So as the House, after having sat until eight of the clock at night, with an hour's refreshing at noon, adjourned, with some hopes and expectations of an agreement, until Monday morning. But then, it did appear, that to yield in any case gives advantage and heart to the adverse party.

Sunday 10. The parsons generally prayed for the Parliament to strengthen their hands and enlarge their hearts; to send them that had wisdom, zeal; and them that had zeal, wisdom; but not much concerning the single person, as was observed.

Monday 11. The House being met, and opportunity taken about something that fell from the parson that prayed this morning,* it was moved that something should be done as to matter of religion. And, in order thereunto, it was resolved, that the several members of each county, should present the name of one godly and able minister of the Gospel for each county, to be approved of by the House, who should meet together, and present their advice to the Parliament, in such points only as the Parliament should propose to them;† the names to be presented upon Friday next.

The fast, which was appointed to be kept, as upon Wednes-

* "Sept. 4. Resolved that the governors of the school and almshouse of Westminster, do take care, that such of the morning lecturers, as preacheth on the respective days, do attend, each morning that they preach, to pray in this House." *Journals.*

† "Resolved, that the number of ministers to be named for Ireland, shall be eight, viz. for each province, two; for Scotland, eight, and that the members who serve for the Universities, have power to present the name of one for each University." *Journals.*

day next, both for the House, and the cities of London and Westminster, &c. and a Declaration ordered for that purpose, which had been prepared many days ago, and often tendered unto the House; but in regard of the great debate it could not be received, so as formal notice thereof could not be given abroad, as might be expected, was resolved to be kept by the House upon the same day. But liberty was left unto the city and all others, to do as they saw cause.

These things being settled, the House, not without some opposition, was resolved again into a Grand Committee to debate the former question; wherein the House did proceed with a great deal of ingenuity, modesty, and candour; and this cannot be denied, but fit to be remembered to all ages. It was agreed on all hands, even by the soldiers, courtiers, judges, Commissioners of the Seal, and generally, by all the Long Robe;* that in the consideration of this question, two things were to be considered of, *verum, et bonum.*

The *verum*, that is, the truth of it was, that the legislative power was in the House of Commons, in Parliament alone, and so was acknowledged and settled. But for the *bonum* of it, whether it were now convenient or expedient, *per hic et nunc.* That was very advisable. The arguments on both sides, were rationally and prudentially urged.

They who were for the joining of a single person, in co-ordination with the Parliament, did it chiefly upon this ground of reason, that, if the supreme legislative power should rest only in the Parliament, they might have opportunities to perpetuate themselves as the old Parliament did;† upon which account, and for other things, much dirt and unsavoury speech was cast upon it.‡ Besides, the Parliament, which judges all others, if it should offend, must be the only judge of its own offences. For those reasons, they thought it fit that there should be a check upon the Parliament; something to control it, which must be the negative voice of some single person, as it is in the Instrument of Government,

* In the margin, "Sir Thomas Widdrington."

† See vol. iii. pp. 519, 520, *note* ‡.

‡ See *supra*, p. xxv.

which negative voice was said to be not a positive negative. for there were only twenty days respite,* (as to most things,) which was only a time for deliberation and advice. Only as to the co-ordination of the single person, that was indeed absolute, as they said it ought to be, in regard it was the very foundation, and foundations were not to be altered or removed. That this was the natural constitution, and most suitable to the governing of the nation, and "other foundation could no man lay."†

Other arguments were used, as to matter of right, by those who argued on that side, as namely:—

1. Divine Providence, which had set a stamp and seal upon this Government.

2. The sword, and present power, all being of God.

3. The addresses and approbation of the nation, from several counties and cities.

4. That the whole nation had concluded themselves and us from altering of it, by the sealing of the indenture of the return of the election.

And lastly, a necessity; wherein they did not forbear to tell us plainly, that it must be so; that my Lord Protector must not be thought, that ever he would part with that power which he conceived was so fully in him. At least, it was extremely convenient, that we should in this comply with his Highness, it being a foundation he had laid, and now not to be disputed.

The arguments on the other side, were,

First, upon reasons.

1. That the supreme power was originally in the people.

2. That to join any thing in co-ordination with it, would be to set up two supremes, that would always check one the other, and have several interests, and several affections, and ends, and, by consequence, would never be at peace.

3. That so great a power could no where be so safely trusted, as in a Parliament, which is the representative of the people.

* See *infra*, p. 21, *note*. † 1 *Cor*. iii. 11.

4. That the former government, by King and Parliament, was but an usurpation upon the common right.

5. That the experience of the inconvenience of that government had caused the nation to alter it, and to settle it in the Parliament; and that they have been in possession of this government by a Parliament, in the way of a Commonwealth, for some years last past.

6. That the providences of God are like a two-edged sword, which may be used both ways; and God in his providence, doth often permit of that which he doth not approve; and a thief may make as good a title to every purse which he takes by the highways.

7. That if titles be measured by the sword, the Grand Turk may make a better title than any Christian princes.

8. That the addresses and approbation of the country were not in reference to the present government, as formerly established, in a single person and a Parliament, but to congratulate the present deliverance out of those extremities and confusions, which the little convention or assembly* were putting upon us, as being sensible that any government for the present were better, until it shall please God, in his due time, to bring us through many shakings to a steady foundation: wherein, they looked upon him† generally, as a great instrument; but not as the root or fountain of a steady and fixed government.

9. For the indenture, that was calculated at Court; and if it had not been sent down, it had never been sent up. Besides, the clause itself was void, no restrictions being to be laid upon the supreme government, which was supposed to be in the Parliament; and the people, when they had conferred their trust, could not limit their trustees, because they represented them; whereby, both as to number and power, and whatsoever they jointly or singly might do, those trustees, who represented them, might do the same.

Besides, the legislative power was supposed to be a right so inherent in the people as they could not give it away,

* See vol. ii. p. 67, *note*. † The Protector.

much less could their representatives. And an indenture can estopp only such as are parties, and where an interest is also conferred; but here was no interest conferred by the indentures, only a deputation or a bare authority. And it was considerable, that those who did seal to the indenture, they were not, perhaps, the thythe of those persons who were the electors, and therefore could bind no other but the parties to the indentures.

Besides, those who did choose and had voice in the elections, and had right of voice were not considerable, in proportion to those who had no voice nor right in elections; as women, children, persons unqualified, who yet are bound up by what the representatives shall do, and have a common right and interest in the liberty and freedom of the people; and therefore, cannot be concluded by what the electors shall do, in binding or restraining those who are the trustees and intrusted, as well for them that did not and could not elect, as for those other that did.

10. Lastly. That the necessity was not apparent, but that it was an easy matter to pretend a necessity, and then to make use of it. For the conveniency of compliance, it was agreed on all hands, to comply, as far as the just interests of the people would permit; and the giving of him the sole executive power, and making of him the supreme single person in the nation, would be a fair testimony of those respects and compliance with him.

That the foundation of the government of this nation was laid long since, and asserted in the late Parliament, by which so many things were built and destroyed, as it would not find an easy faith in another age; and if that foundation were not good, the Parliament, and all that acted with it, since the time that the King first left it, were the greatest and most infamous regicides and murtherers, and villains in the world. That no man that sat there that had acted in any capacity, especially the soldiery, (who were most violent for the contrary opinion,) could be justified upon any other account.

Much more was said on both sides, as to the conveniences and inconveniences of either government, and it was disputed

as if they had been in the schools, where each man had liberty to propose his own *Utopia*, and to frame commonwealths according to his own fancy, as if we had been *in republica constituenda* and not *in republica constituta*.

At length, the more moderate sort on both sides were willing to propound expedients; and, accordingly, it was propounded by them who were for the co-ordination of a single person, that there might be a check, as they called it, upon the Parliament, as to the legislative power in some few things.

1. To avoid the perpetuity, or some other exorbitances in the supremacy of Parliaments. Therefore, a sole person might be conjoined with it to prevent these.

2. As to the militia, that the Parliament might not have the sole disposing power of that.

3. As to religion, that it might not impose what it pleased in that.

As to all other things, they were contented to leave the legislative power entire to the Parliament, so as the executive power might be wholly in the sole person; with such qualifications, restrictions, and instructions, as it should receive from the Parliament.

Those who were for the Parliament alone, would have the Parliament at least to have the precedency, that is, that the Government should be in the Parliament and a single person, limited and restrained as the Parliament should think fit. Which was proposed, in effect, by Mr. Justice Hale,* and the sense and opinion of the House, ran generally that way. After debating of it that day, until eight of the clock at night, the House adjourned, with a reasonable good understanding one of another, as appeared by outward construction. The adjournment being made until eight of the clock next morning, and most men's thoughts were much satisfied with hopes and expectations of good success.

Tuesday 12. This morning news was brought to the Herald's Office, where I lay, with my brother Bish,† that the

* See vol. iii. p. 142. † See *ibid.* p. 15, *note*.

Parliament House was dissolved, and that, for certain, the Council of State and Council of War, had sat together all the Sabbath-day before, and had then contrived this dissolution. Notwithstanding, I was resolved to go to Westminster, to satisfy myself of the truth, and to take my share of what I should see or learn there.

Going by water to Westminster, I was told that the Parliament doors were locked up and guarded with soldiers, and the barges were to attend the Protector to the Painted Chamber. As I went, I saw two barges at the Privy Stairs. Being come to the Hall, I was confirmed in what I had heard. Nevertheless, I did purpose not to take things merely upon trust, but would receive an actual repulse, to confirm my faith.

Accordingly, I attempted up the Parliament-stairs, but there was a guard of soldiers, who told me there was no passage that way; that the House was locked up, and command given to give no admittance to any. That, if I were a member, I might go into the Painted Chamber, where the Protector would presently be.

The mace was taken away by Commissary-general Whalley. The Speaker and all the members were walking up and down the Hall, the Court of Requests, and the Painted Chamber, expecting the Protector's coming; the passages there, being likewise guarded with soldiers.

The Protector coming about ten of the clock, attended with his officers, life-guard, and halberds, he took his place upon the scaffold, where it was before, and made a speech of about an hour and a-half long.* Wherein he did not forbear

* See "His Highnesse the Lord Protector's Speech" (1654). 43 pages, *sm.* 4to.; *Parl. Hist.* xx. 349–369. "Oliver being acquainted," says *Whitlock*, "that the debates of the Parliament grew high, touching the new government, and entertaining a jealousy, (to which he was addicted,) that this Parliament would either too far invade it, or endeavour to overthrow it, he sent for the members to meet him in the Painted Chamber, where he spake to them." *Memorials*, p. 587.

"Cromwell," says *Ludlow*, "being informed of these transactions by his creatures, and fearing to have that great question put, lest he should

to tell us, that he did expect and hope for better fruit and effect of our last meeting in that place than he had yet found; that he perceived there was a necessity upon him to magnify, as he called it, his office. He told us a large series of the providences of God and the suffrages of the people, which were so many witnesses, evidences, and seals, of his calling to the government, and which did cause him to put a greater value upon his title so derived, than upon the broken hereditary title of any prince whatsoever.* That having received his office from God and from the people, he was resolved never to part with it, until God and the people should take it from him.

That it could not be expected, when he told us before, that we were a free Parliament, that he meant it otherwise free than as it should act under that government. That those pitiful forwardnesses and peevishnesses, which were abroad, he valued no more than the motes in the sun. But that the Parliament should now dispute his office under whose authority we were then met, was a great astonishment to him.

That he was unwilling to break privileges; but necessity had no law.

He told us, he had ordered the Parliament doors to be locked up and guarded, and had appointed an officer to take subscriptions to a recognition of his authority; which being done might give us an entrance.† Which being said, we were dismissed about eleven o'clock.

be deposed by a vote of this assembly, from the throne which he had usurped, caused a guard to be set upon the door of the House, early in the morning, and sent to the Mayor of London, to acquaint him with the reasons of what he was about to do, to the end that he might prevent any disorders in the city. The members coming at the usual hour, were refused the door, and required to attend him in the Painted Chamber." *Memoirs*, ii. 509.

* "As being less subject to those crackes and flaws they are commonly incident unto. Which titles have cost more blood in former times, in this nation, than we have leisure to speake of now." *Speech*, (1654,) pp. 26, 27; *Parl. Hist.* xx. 361.

† See *Observator*, (1654) No. 2, p. 14. The Protector could scarcely have expected universal credence among his auditors, when, most

His party, that is, courtiers and officers of the army, and some others, presently subscribed. Before they adjourned, which was about twelve of the clock, there were about one hundred subscriptions; which being entered, they sent for the Speaker, who came, subscribed, entered, and adjourned until two of the clock.

In the mean time, the rest of the members consulted one another's judgments. I went to see what it was that we were to subscribe unto. It was written in a long piece of parchment in these words, or to that effect, viz:—

"I do hereby freely promise and engage, that I will be true and faithful to the Lord Protector and the Commonwealth of England, Scotland, and Ireland, and that according to the tenor of the indentures whereby I am returned to serve in this present Parliament, I will not propose, or consent to alter the government as it is settled in a sole person and the Parliament."*

Our Norfolk members† did not presently subscribe, saving

solemnly and according to his common-place passionate desire of a pastoral life (see vol. ii. p. 466), he declared:—

"I hoped, in a private capacity, to have reaped the fruit and benefit, together with my brethren, of our hard labours and hazards; to wit, the enjoyment of peace and liberty, and the privileges of a christian and of a man, in some equality with others. After Worcester fight, I came up to London, to pay my service and duty to the Parliament that then sat. I hoped to have had leave to have retired to a private life. I begged to be dismissed of my charge. I begged it, again and again; and God be judge between me and all men, if I lie in this matter."

It must have been difficult, at these solemn asseverations, to have suppressed, at least the secret murmurs of incredulity. On the royal ambition of Cromwell, immediately "after Worcester fight," as detected by an intelligent near observer, see vol. ii. p. 346. See also, an earlier detection, *infra*, p. 49, *note.* ‡

* See *Ibid.* p. 273 *note* †.

† "*Norfolk.* Sir John Hobart, Bart., Sir William D'Oyley, Kt., Sir Ralph Hare, Bart., Thomas Weld, Robert Wilton, Thomas Sotherton, Philip Woodhouse, Robert Wood, Sen., Philip Bedingfield, Sen., Tobias Frere. *Norwich-City,* Bernard Church, John Hobart. *Lynn-Regis,* Philip Skippon, Guibon Goddard. *Great-Yarmouth,* Colonel William Goffe, Thomas Dunn." *Parl. Hist.* xx. 301.

only Mr. Frere, who instantly subscribed it. The rest of our members did most of us dine together, purposely to consult what was fittest to be done in so great an exigent, in order to the discharge of our trust. And, truly, the subscription was, in effect, no more than what we were restrained unto by our Indentures, and the thing would be done without us, and we had fairly contended for it: we had not given the question, but it was forced from us, and we were told that plainly it must be so. For these and several other considerations and reasons, which we thought ought to prevail with men preferring the peace of our countries and the safety of our people immediately concerned in this affair, before passions and humours, we thought fit rather to give way to the present necessity, and to comply with it by submitting than refusing. Accordingly we did subscribe, all except Mr. Woodhouse, Mr. Hobart, and Mr. Church. And although we condemn the breach of privilege as much as any, yet we doubt not but to acquit ourselves to God, and to our country, in so doing, rather than to put the nation into another combustion and confusion.

After we had subscribed, we went into the House, and after some expressions of tenderness and respects to our fellow members without, we adjourned until Thursday morning; the next day, Wednesday, being the Fast.

Wednesday 13. The Fast was kept at St. Margaret's. There most of all our members met. Mr. Marshall,* Mr. Goodwyn,† and Dr. Cheynell,‡ preached; and after sermon

* See *supra*, p. xvii. † See vol. iii. p. 1, *note*.

‡ "A frequent preacher before the members of Parliament," according to *Wood*, and "rector of the rich parsonage of Petworth in Sussex," whence he was ejected in 1662, surviving his deprivation only three years. He is further described by the Oxford historian as "a Presbyterian, and an enemy to the bishops and ceremonies of the Church;" though he zealously advocated the theology inculcated and enforced by his *Alma Mater*. Thus, among his works, *Wood* mentions —

"The rise, growth, and danger of Socinianism" (1643). "Truth triumphing over Error and Heresie; or a relation of a disputation at Oxon, in St. Marie's Church, between Mr. Cheynell and Mr. Erbury, a Socinian," (1646). "The Divine Trin-unity of the Father, Son, and

the members met and consulted one another, to give and receive satisfaction.

Major General Harrison was secured the day before, out of some prudential jealousies of heading, as I conceive, any discontented party.*

Holy Ghost, (1650,) dedicated to the University of Oxford in a Latin epistle.

"A Discussion of Mr. Frye's tenents lately condemned in Parliament, and Socinianism proved to be an Unchristian Doctrine." Mr. Frye, a member of the Long Parliament, had been expelled for the publication of Antitrinitarian opinions.

Dr. Francis Cheynell is now chiefly known by his very extraordinary conduct when he attended the last hours and the burial of Chillingworth. On this occasion he published, in 1643:

"*Chillingworthi Novissima;* or, the Sicknesse, Heresie, Death, and Burial, of William Chillingworth, Clerk of Oxford, and in the conceit of his fellow-soldiers, the Queen's Arch-engineer and Grand-intelligencer."

This publication included a "Speech at the funeral of Mr. Chillingworth's heretical and mortal Book," and a "Profane Catechisme collected out of Mr. Chillingworth's works."

Wood says: "Dr. Cheynell was accounted, by many, especially by those of his own party, (who had him always in great veneration) a good disputant and preacher, and better he might have been, and of a more sober temper, had he not been troubled with a weakness in his head, which some, in his time, called craziness."

This learned divine is further described as "dying in a condition little better than distracted," at "an obscure village called Preston, lying between Chichester and Mydhurst," whither he retired, after he was turned out from Petworth," and where "he, before, had purchased an estate." *Athen. Oxon.* (1692) ii. 245, 246. See Des Maizeaux's Life and Writings of William Chillingworth," (1725); *Index; Brit. Biog.* (1769) v. 151, 152. *Biog. Brit.* (1784) iii. 513, 514.

Dr. Calamy, on the authority of Dr. Cheynell's "particular friend," says that "he was disordered in his brain some years before his death; but he was perfectly recovered to a sound mind before he retired from Petworth." *Account* (1713), p. 676; *Continuation* (1727) p. 817.

* The Dutch ambassadors in England to the States General, Westminster, 15-25 September, 1654:—

"In the meantime, it is said that another party, called the Anabaptists, under the direction of Harrison, was busy to get the hands to a petition to present to the Parliament; so that his Highness was moved thereby, to secure Harrison at his house in the country, (by a party of

Thursday 14. This day the House met. Ordered thanks to be returned to the preachers, but the sermons were not ordered (upon debate) to be printed, in regard of some inconveniences that had been found in it.

Another fast was ordered to be kept, or rather the fast day altered from the 4th day of October unto the 11th day, throughout all the nation.

A Committee* was ordered forthwith to draw up a Declaration, for the satisfaction of our fellow members that were not yet come in: namely, that it was not intended by any thing in our former subscription, to preclude or restrain ourselves from the examining or altering of any of the articles in the Instrument of Government, saving only that of the first article of settling the government in a sole person and the Parliament.

Which being done accordingly, and voted,† the House adjourned until next morning at eight of the clock.

horse) and to remedy what was acting in the Parliament, and to send for the members into the Painted Chamber, as happened on Tuesday morning, at nine o'clock, there being several regiments of soldiers dispersed up and down the city, and all places well secured.

"Some 145 signed presently; and the next day some 50 more. There are others, without doubt, who after some consideration will do as the rest have done, sign, and sit in Parliament as they ought, and not stand without, at the door, and be laughed at." See "Thurloe State Papers," ii. 606.

"To Cardinal Mazarine, (*Anon.*) London, 25 September, 1654 (N.S.).

"They are still raising men here for the fleet, whose design none knows but his Highness; the Parliament itself is not acquainted with it. A very strange thing! Our Kings have submitted to the Parliament. At present no such thing. His enterprizes are only known to himself. He doth in this, as he did with his business in Scotland and Ireland. He did his work and spoke afterwards." *Ibid.*

* "Colonel Fiennes, Sir Henry Vane, Mr. Recorder [Serjeant Steel], Mr. Attorney-General [Prideaux], Lord Commissioner Whitlock, Colonel Clark, Lord Commissioner Widdrington, Lord Commissioner Lisle, Sir John Hobart." *Journals.*

† "Ordered that this Declaration be, forthwith, printed and published." *Ibid.*

Friday 15. This day, the House being met, something was debated about the bringing in of the names of some ministers for advising in matters of religion,* but in regard the House was not yet filled, and they did daily expect the return of those members, the consideration of that was put off until another day.

Then they fell into consideration of those absent members, and of doing something for their satisfaction. Many expedients were propounded, but after much debate it was thought most advisable to do nothing more than what had already been done in it, it being thought fit that they should all come in, upon the foot of the same account that we did who were already come in. But much respect and tenderness was shown unto them, and it was not yet thought fit to impose anything upon them, or to limit them to any time.

Thereupon, the House, having before ordered the Instrument of Government to be brought into the House, it was now ordered to be read, that so the House might be possessed of it, and the further consideration thereof to be put off until Monday morning.

It was then moved by the Lord Commissioner Whitlock, that in regard of the many exorbitancies, both in the powers and the proceedings of the judges at Salter's Hall, that Act concerning the relief of creditors† might be referred unto a Committee, with power to send for persons, papers, and records. It was moved, that in the mean time they might be suspended from any further proceedings, but that last was not thought so parliamentary, to suspend the proceedings of any judges, upon a bare motion or complaint, until something should appear upon due proof.

It was also desired that the act concerning marriages‡ might be taken into consideration, in regard of many inconveniences which might hereafter happen, in matter of bastardy, by reason of the many circumstances required by the Act to the validity of a lawful marriage, which in future ages may prove very uncertain and difficult to prove.

* See *supra*, p. xxvii. † See *infra*, p. 5, *note*. ‡ See vol. ii. p. 38, *note* †.

Both these before-mentioned acts were referred to a Committee,* to consider of them and to report to the House their opinions of them, and then the House to give further respite and time of consideration to the absent members, adjourned until Monday next.

Saturday 16. This day I went to Boys, with my brother Green,† intending to stay there two or three days. It was Wednesday the 20th before I returned.

Thursday 21. I found that the House had, before then, resolved the first article of the government, namely, that the legislative authority should be in a single person and the Parliament,‡ with some proviso of putting checks upon both, as should be afterwards advised.

Now, this day, it was resolved that Parliaments should be triennial, and not be dissolved in six months, without their own consent; that, in case of any emergent necessity to continue the Parliament any longer, that should be done by Act of Parliament, the time of such continuance not to exceed three months, in which Act the Lord Protector should have his negative voice. And that accidental Parliaments should not continue above three months, without a like Act of Parliament, when the Protector was also to have his negative voice.

This was the first negative in the Lord Protector, which was thought to be fit to be put in him, as a check to prevent the perpetuating of parliaments.

Friday 22. The fourth article of the Government, concerning the militia, was taken into consideration, and it was resolved that the present Lord Protector, during his life, the Parliament sitting, with the consent of Parliament, and not otherwise, shall dispose and employ the forces both by sea and land for the peace and good of the three nations. Accordingly, a letter was presented to the Speaker, from the

* "Consisting of Whitlock and many others." See *Journals*.

† See vol. iv. p. 430, *note*.

‡ And voted "a Recognition of the Government" to be subscribed by all persons returned, or who shall be returned. *Journals*.

Lord Protector, wherein he did acquaint the House that there was an opportunity offered for the employment of some of the forces, especially by sea, for the advantage of the Commonwealth, the design whereof was well known to some of our members (meaning those of the Council,) and if we so pleased, it should be communicated to us. But it being moved that such designs, if they should be discovered, were more than half prevented, thereupon it was thought fit, and so resolved, that that design should be wholly left to the management of the Lord Protector, to be carried on by him for the good of the Commonwealth.

Saturday 23. The second part of the fourth article, should, according to order, have been taken into debate. But in regard it had reference to a Council, and no Council was yet settled, it was therefore thought fit to leave that debate and to fall upon the second article, which concerns the Council. Which was done, and accordingly resolved:—

1. That the Lord Protector, for the time being, shall be assisted with a Council.

2. That the Council shall be nominated by the said Lord Protector, and approved of by the Parliament, and not otherwise.

This day likewise, the Act concerning the subscribing of the Recognition, and preventing any future restraints of the kind upon Parliaments, was read the first time.

Monday 25. The House being met, the Act concerning the subscribing of the Recognition, &c. was read the second time, and committed for an amendment.

It was afterwards moved, that the Ordinance concerning the ejecting of scandalous and ignorant ministers be taken into consideration, in regard that some of the powers were thought unreasonable, and the Commissioners named, very incompetent. Accordingly it was referred to a Committee, to consider of it, and to report to the House their sense and opinion of it.

Afterwards, the Speaker left the chair, and the House resolved itself into a Grand Committee, upon the debate of the Articles of Government, and fell upon that part of it which

concerns the Council where they left on Saturday, and voted that the number of the Council shall not exceed twenty-one, of which number nine shall make a Council to act anything as a Council.

In the afternoon the Committee concerning the Ordinance for ejecting scandalous ministers sat in the Star-Chamber, where every member had a vote.

Tuesday 26. The Speaker presently left the chair, and the House resolved itself into a Grand Committee upon the former debate, and fell in pursuance of the former debates concerning the Council, to debate the continuance of the Council, and resolved accordingly that no person to be chosen of the Council shall continue longer than forty days after the meeting of each succeeding Parliament, without a new approbation by the Parliament.

Having thus far settled the Council, it was thought fit to resume the debate upon the fourth article, concerning the settling of the standing forces in the intervals of Parliament, and did forthwith resolve that the present Lord Protector, during his life, with consent and advice of the Council, and not otherwise, shall dispose and employ the forces of this Commonwealth for the good of the same in the intervals of Parliament.

Which being done, some would have resorted back again to the business of the Council, and put a full period to that. Others conceived that that debate was at first taken up only in order to the settling of the standing forces in the intervals of Parliament, which being done, they desired to fall upon the other negatives, which was proposed to be, next, in matters of religion. But the standing forces having been in part settled, and it being alleged that in point of good husbandry it would be fit for us to take the consideration of the present forces into debate, in regard it was apprehended that many of them might possibly be abated, and so the taxes, in some proportion, at least eased. This sounded so plausibly in every man's ear, as it was soon embraced, and consequently they fell upon the thirtieth article, and resolved that the standing forces of this Commonwealth shall be such and no

more than shall be agreed upon, from time to time, by the present Lord Protector and the Parliament. And for the better satisfaction of the House, both as to the number and manner of the pay, a Committee was ordered to consider of this business, and to attend the Lord Protector in it, and to report to the House: of which Committee Sir John Hobart had the chair.

Wednesday 27. The Speaker being sat, the Bill for subscribing the Recognition was brought in, with the amendments. These were read, and the Bill re-committed. After, the House resolved into a Grand Committee concerning the government, and began the debate with the second article.

Resolved, that the exercise of the Chief Magistracy, over the countries of England, Scotland, and Ireland, and the dominions, &c. shall be in the Lord Protector, assisted with a Council, according to the laws, and such limitations as should be agreed upon in Parliament.

Thursday, 28. This day, the House proceeded, in a Grand Committee, with the debate upon the third article of the Government, and resolved that all writs and process, &c. should run in the name and style of the Lord Protector of England, Scotland, and Ireland, &c. and that all such honours as should hereafter be conferred, should be derived from the Lord Protector,* but that no titles of honour hereafter to be so conferred, should be hereditary, without consent of Parliament; and that he should not have power to pardon murther.

Friday 29. Resolved, that it shall not be in the power of the Lord Protector to pardon any person lawfully convicted of treason.

That the benefit of all forfeitures, or confiscations, not already granted or lawfully vested, or disposed to any other person or persons, bodies politic or corporate, shall belong to my Lord Protector, according to the laws, and as shall be agreed upon in Parliament.

* See vol. iii. p. 354, where "not assigned" is incorrect.

This day, the Lord Protector escaped a great danger, from his coach-box.*

Saturday 30. Resolved, that the Lord Protector, with the advice and consent of the major part of the Council, shall have power in all things to hold and keep correspondences with foreign kings, princes, and states.

The House now fell upon debate, whether the Lord Protector, with the Council, should not have power to make war and peace. The debate being long, and the House divided in opinion, it was adjourned until Monday morning.†

Monday October 2. The debate concerning the power of making war and peace, being this morning taken up, the question was put, concerning the power of making war only.

It was very much endeavoured by all the Court, whether to settle the power in the Lord Protector and the Council, by reason that many sudden emergencies might happen, and many sudden opportunities and advantages be given, which could not expect the calling of a Parliament, and being lost once, all the wisdom of the Parliament could not possibly recall it.

Besides, we could not but be upon great disadvantages with other princes, who, knowing the constitution of our nation to be thus, might offer us many affronts, and upon any design, be beforehand with us, as well knowing that we could not encounter them in a war without the calling of a Parliament.

Notwithstanding all which, it was alleged on the other side, that the power of war was in itself an ancient right of the Parliament,‡ that though kings in former times had, *de*

* See Bates's *Elenchus* (1676), p. 299; Coke's *Detection* (1697), p. 397.

† "A Letter of Intelligence from Cologne, 29 Septembris, 1654. "Here is a common report, of which your letters say nothing, that the Protector went into the Parliament House, and there had his peroration for an hour; and that after, the Parliament, with unanimous consent, called his Highness Emperor; and his title they have written thus 'Oliver, the first Emperor of Great Britain, and the Isles thereunto belonging, always, Cæsar,' &c. Your next will clear this." See "Thurloe State Papers," ii. 614.

‡ See vol. iii. p. 313, 314, *note* ‡.

facto, made war without advice of Parliament, yet there was no king since Henry III.'s time, but, at some time or other, did ask advice of Parliaments in that very point, and did call and summon their Parliaments to that very purpose. If, at any time, they did make war without the advice of Parliament, it was only at their own particular charge, and out of their own purse.

But, the power of making war, did necessarily employ the power of raising men, of raising of monies, and of making military martial laws, which, in the very making of them, are arbitrary, and in the execution, summary. In truth, it did comprise, in the account of it, a power over our estates, our persons, and our lives. And this was an undoubted right of Parliament, that no tax can be made, no man's person imprisoned, nor their lives exposed to arbitrary martial laws, but by consent of Parliament. Therefore, we could not give this power to the Lord Protector.

It was needless, and the objection frivolous, the case of any sudden affront. We were to have a standing force always in the nation, able to oppose the proudest enemy, and put him to a halt, until the Parliament could be called. In case any sudden opportunity should offer itself of advantage, it is not always necessary to lose it, because it cannot be as suddenly laid hold on; or if it be lost, it may possibly be redeemed, or at worst, if it must be infallibly lost:

1. That opportunity, in wisdom, is to be suspected, which cannot stay for sound advice to be put in execution, but must be enterprised rashly, or without deliberation.

2. At worst, it is but a present mischief, and such a mischief as possibly may not happen in an age; and if it should happen, better such a mischief, than an inconvenience, a continual standing inconvenience, of having an arbitrary power in the Protector and Council, to make a war; and by consequence to raise men, to raise money, and to do all those other arbitrary things before mentioned.

It will be more safe to the Lord Protector and his Council, to stand discharged of so dangerous a trust, for which they must be accountable to their utmost perils, in case the events

of any war begun by them, should prove unfortunate. And certainly, it will be more formidable to any of our enemies, when they shall know it is not a few humorous persons that they are to engage with, but a whole nation they are to make war against. If any shall be so weak, or so audacious, as unworthily to affront us, no doubt but they may at leisure repent it, and we shall never want the courage nor the wisdom to chastise such temerity, and to make them pay amends for their pains.

Our wars will have much more reputation and fear, when it will be presumed that a whole nation will not consent to a war lightly, nor otherwise than rationally, and upon just grounds; and when they shall so engage, it will be heartily, effectually, and to purpose. Which considerations alone will make all foreign nations to be cautious and wary, how they provoke us.

Upon these, and other weighty reasons, after two full days' debate, it was brought to the question, and resolved, without one negative, that the power of making war, is in the Lord Protector and the Parliament, so as no war can be undertaken but by consent of Parliament.

Tuesday 3. *Wednesday* 4. The debate of these two days was wholly upon the power of making peace; and at last it was brought to this resolution, that, sitting the Parliament, the power of making peace is in the Lord Protector and the Parliament; but in the intervals of Parliament, it shall be in the Lord Protector and the Council; with such limitations and restrictions, as the Parliament shall think fit.

Thursday 5. The Speaker was called to the Chair, and it was ordered that there be a Committee appointed, of the whole House, to consider of matters of religion; to sit twice in the week in the afternoons, and no other Committee to sit in the mean time; and that the Committee should advise of twelve or twenty names of ministers to be sent for, to advise of such matters of religion, as should be propounded to them from the House.

A report being made from the Committee of Privileges, that in regard there were many exceptions depending before

them to several elections in Ireland, and the bringing over witnesses would be very chargeable and dilatory, therefore, it would please the House to order commissions to be sent over to Ireland, to examine the matter-of-fact upon oath, and to transmit the examinations to this Committee to proceed in judgment upon them. It was likewise moved in the House for Scotland.

It was argued and debated, that this House did never dispense with the examination of witnesses, touching their own privileges, out of their own hands, but had the witnesses brought up, *viva voce;* that affidavits out of other courts were never admitted in such cases; that if a commission were granted, it must be by especial Act of Parliament, it being a new thing and a new law, that not only a new commission, but the very form of the commission, must be by Act of Parliament; for the Commissioners of the Seal cannot set the seal unto any commission which is not warranted by law, nor to any new invented commission; that heretofore, some Lord Keepers had been brought into a *premunire* for the like thing.

But, the thing itself was held very dangerous; for if any members were returned out of Ireland, and should be here sitting in Parliament, and exceptions be brought in against his election, and a commission prayed to examine the matter-of-fact in Ireland, either the member that is here sitting, must be forced to go over to Ireland to see the examination of the witnesses, and so the Parliament should lose a member, and upon the same terms they might lose all the members; or else, the party complaining shall have the sole examination of the witnesses, and the sole stating of the matter-of-fact; which when once stated, is more than half judged.

Therefore, upon the whole matter, the House would do nothing in it, but left the examination of witnesses, in their causes, to the same course and order as other examinations were always used, and to refer it back again to the Committee of Privileges.

A petition of the Earl of Worcester*, for some enlarge-

* See vol. iii. p. 372, *note.*

ment from the Tower, was likewise read. It was alleged that he was a Papist, a Papist in arms; that had been in arms in England, had headed a party in Ireland; had made a most dishonourable peace there; had done many other disservices, for which he was excepted from all mercy and pardon; his whole estate to be sold, and all such to be banished.

Yet he was an old man, had lain long in prison, and the small-pox was now in the same roof where he lay; and he had not, as was said, done any actions of hostility, but only as a soldier; and in that capacity had always shown civilities to the English prisoners and Protestants. It was, therefore, ordered that he should be bailed out of prison.

Sir Robert Pye being returned to serve in Parliament, was arrested in execution since his return, but before the sitting of the Parliament. Ordered, that the bailiffs and under-sheriffs be sent for as delinquents.

It was agreed, that the privilege of Parliament did begin from the very day of the election. Therefore, he was to have forty days' preparation to come up, and continued forty days after the Parliament, to prepare for his return.

Friday 6. *Saturday* 7. Were wholly spent upon the distributions of the number of members to serve in future Parliaments. We agreed with the Instrument, in the whole number of four hundred, Jersey and Guernsey being left out, because not governed by our laws, but by municipal laws of their own; and we differed but little in the particular distributions.

The Ordinance concerning the regulating of the Chancery, which was lately set out by the Protector and his council, was committed by the Parliament to be considered of; there being some things, as affirmed, which were not practicable in it.

Monday 9. It was ordered that all the articles concerning Government, relating to the election of members to the Parliament, shall be referred to a Committee, to consider of them.

Tuesday 10. The House passed over all the rest of the articles, and came to the thirtieth article, which concerned the

making of laws, by the Lord Protector and his Council, until the Parliament should be called, and to be binding until the Parliament should take order concerning the same.

Resolved, that all those Ordinances so made by the Lord Protector and his Council not before committed, and likewise all Acts and Ordinances made since 3d July, 1653, including all those Acts of the late little convention be referred to the examination of a Sub-Committee, to consider what were fit to be continued or repealed.

This day, likewise, a motion was made, in regard of the low prices of corn in the nation,* that licence be granted for the free transporting of it; without paying custom, and likewise that there be liberty for who please to engross it without the danger of the law. Which business was referred to a Committee, to draw up something to present to the House to that purpose.

The thirty-first article was likewise referred to a Committee, to consider what lands and revenues were yet unsold and undisposed of, and how they might be disposed of, for the payment of the public faith and other debts of the Commonwealth, and of settling the rest into a standing revenue for the use of the Protector.

Wednesday 11. Fast-day; kept in the House by three preachers,† from nine of the clock in the forenoon, until four in the afternoon.‡

Thursday 12. The Speaker being in the Chair, it was moved, in regard of the late disappointment of the Greenland fleet, and the great want of oil to carry on the trades of cloth and soap, that therefore, licence be given to fetch it out of Holland.

* "In regard of the plenty of corn, butter, and cheese," says *Whitlock*, "which God gave us this year." *Memorials*, p. 589. See *infra*, p. lx. *note* *.

† "Mr. Sidrach Simpson, Mr. Turner, and Mr. Griffith." *Journals*. See vol. ii. p. 321, *note* *.

‡ See *Ibid*, p. 372, *note* §. "The clergy in Scotland," says *Whitlock*, "refused to observe the fast-day; it being their principle not to receive any directions for the keeping fasts, from the Civil Magistrate." *Memorials*, p. 589.

Resolved, that it be referred to a Committee, to call before them the Company of Greenland and Eastland merchants, and thereupon to consider, how in what manner there may be a present supply of whale oil for this nation; and how the trade of fishing for whales may be regulated for the advantage of the Commonwealth, and report their opinion.

That it be referred to the Committee, to whom the business for transportation of corn is referred; and they are to meet upon this business this afternoon, at two of the clock.*

The debate of this, did draw the late Act concerning trade† into consideration. After the whole forenoon's debate, by the country gentlemen against the citizens and late Parliament-men, who were in love with creatures of their own making, at length

Resolved, that there be a Grand Committee of the whole House for Trade, when the Act shall be taken into special consideration, and that they do sit in the House every Tuesday, in the afternoon.‡

Friday 13. The thirty-first article§ was referred to a Committee.||

* Corrected from the *Journals*.

† "Oct. 29, 1653 Mr. Warner reported from the Committee for Trade, a Bill for the advancement and regulating of the trade of this Commonwealth." *Journals*.

‡ *Ibid.* "After committing two bailiffs, who arrested Sir Robert Pye, a member, the House was resolved into a Committee of the whole House, upon the government." *Journals*.

§ See *supra*, p. xlix. Nothing on this subject in the *Journals*.

|| "Mr. Hoskins reports from the Committee, to whom the Ordinance for regulating and limiting the jurisdiction of the Court of Chancery is referred.

"Resolved that it be referred back to the same Committee, to take into consideration the said Ordinance, and to bring in a regulation of the whole, for the further consideration of this House." *Ibid.*

This Ordinance was promulgated by "the Lord Protector and his Council. Aug. 22, 1654." It proposed (a reform still, apparently, postponed *ad græcas calendas,*) "that all proceedings may be with less trouble, expence, and delay than heretofore, in that Court, too often (see vol. iii. p. 175, *ad fin.*) misnamed of equity." See *Ordinances*, &c. (1654,) pp. 493—531; *Scobel*, pt. ii. 324—335; *Parl. Hist.* xx. 311—313.

Saturday 14. Adjourned; and I took physic that day, and two days after.

Monday 16.* The debate began upon the thirty-second article, whether the office of the Lord Protector should be elective or hereditary. After three whole days' debate, viz. Monday, Tuesday, and Wednesday, at length, about Wednesday, at five of the clock, it was

Resolved, that the office of the Lord Protector shall be elective, and not hereditary.†

* "Ordered, that the Serjeant-at-arms attending the Parliament, do pay over to the Churchwardens of the Church of Margarett's Westminster, the monies collected in the House on Wednesday last, being the fast-day, to be disposed of for the relief of the poor." *Journals*. See *infra*, pp. 359, 360.

† *Whitlock* thus extends this discussion into, " Oct. 19. The House sat this day, and the three former days, in a Grand Committee, about the Government, and had much debate, whether it should be elective or hereditary, as to the single person, the Protector of the Commonwealth." *Memorials*, p. 589.

The following diplomatic correspondence will serve, in some measure, to supply the absence of information in Mr. Goddard's MS. and the entire silence of the *Journals*. The Dutch ambassadors, unless there be some mistranslation, had formed a different opinion from the French ambassador, of Lord Lambert's argument and the Protector's satisfaction.

" Bordeaux, the French ambassador in England, to Count Brienne, London, 29th October, 1654.

" My foregoing gave you to understand that there was spoken in the Parliament, of succession to the charge of Protector: and that this proposition was traversed. I did, also, add that the opinions of many persons hindered this business from being debated, by reason of the little likelihood there was, that the resolution would be advantageous to the Protector. However, being persuaded of the contrary, or being carried on by some other consideration which is not known to all the world, he caused this business to be renewed again.

" Presently, his party seemed to be the strongest. Yea, General Lambert, himself, made a long speech, to persuade the Parliament that it was necessary to make the charge of Protector hereditary. But, when it came to the vote, all those relations and friends were of opinion to make it elective. And of 260 members, 200 of them were of that opinion.

" Which hath not only surprised the public, but the family of the Lord Protector, who thought himself sure, the day before, to keep the dignity in his family. And in effect, without this confidence, he might

Thursday 19. The other part of the thirty-second article, concerning the persons by whom the election shall be made, was taken into debate. After three other whole days, viz. Thursday, Friday, and Saturday, at length it was—

easily have prevented that deliberation, which could not be but disagreeable to the officers of the army, whereof the least doth pretend in his turn to command in England; so that, hereby, it is easily discerned, that the nation is nowise affected to his family, nor much to himself. Without doubt he will strengthen his army, and keep that in a good posture.

"They began this morning to agitate, to whom the choice should appertain. However, the children of the Protector do not yet hold themselves altogether excluded; they may chance to be established by some other Parliament. Admiral Blake is gone to sea. My foregoing did desire his Majesty to use all manner of precaution, and to look to his sea-towns." See "Thurloe State Papers," (1747,) ii. 681, 682.

"The Dutch Ambassadors in England to the States General, 30th October, 1654, N. S.

"One of the chiefest things which hath happened since our last in the Parliament is the debate that hath been, whether the charge of Protector shall be hereditary or successive. Which was, at last, decided by plurality of voices for election, notwithstanding many endeavours to the contrary, and amongst the rest, the Lord General Lambert, who voted for succession. Now, the debate is, upon whom and after what manner the election is to be made. Whereof we shall be able to inform your high and mighty lordships by the next.

"His Highness is now pretty well again, and was yesterday in St. James's Park, in a sedan, to take the air, and is also said to be pleased with the resolution of the Parliament, and to approve of the same. Blake is said of certain to be gone to sea, with twenty-four ships, which were to be followed by five others, that were somewhat damnified through the last great winds. What course they will steer, and what design they have in hand, is not possible to penetrate into." *Ibid.* p. 684.

Bordeaux to Chanut, the French Ambassador in Holland. London, 30th of October, 1654. N. S.

"The Parliament have this week debated a question, which many did believe they would not have meddled with; and so the decision was not so as the Protector did expect. They have resolved his charge shall be elective. General Lambert made a long speech to have it successive. It is thought that this will alienate the minds of the officers of the army, whereof the least doth expect to govern England in time.

"Now, they are debating to whom the election shall belong, and who shall govern in case of death during the interval of Parliament. General Blake is gone to sea. The other is still preparing." *Ibid*, p. 685.

Resolved, that, upon the death of the Lord Protector, in the intervals of Parliament, another fit person shall be forthwith elected to succeed him, which election shall be by the Council, so constituted, and with such limitations and restrictions as the Parliament shall think fit.

Monday 23. It was debated whether the elections shall be, in case the Lord Protector should die during the continuance of the Parliament.

Resolved, that in such case, the election shall be in the Parliament and not in the Council.

The reasons given for the elective or hereditary succession, *pro et con.*, were divers; but I was not there at the time of those debates. But the reasons given, why the election should be rather in the Parliament than in the Council, were also divers, some of which I will here remember.

For the Parliament.

1. It was asserted and so agreed, on all sides, that it was an original fundamental right, inherent in the Parliament, to choose their supreme officers. Something of authority was alleged, in all ages, even from Cæsar's time, downwards, how kings have been elected, or approved and confirmed by Parliaments.

2. It would be thought a great diminution and disparagement to the Parliament, not to choose the Supreme Magistrate.

3. The original rights of the people, being intrusted with the Parliament, they cannot depute or delegate that trust to another, therefore not to the Council.

4. It would be much more satisfactory to the people, and more safe for the Protector, to have his election by the Parliament, the stamp of whose authority upon him would make him more willingly accepted by the people; and, besides, he that shall be so chosen by the Parliament, the Parliament will be engaged to stand by him, and to support him upon all occasions, which obligation will not be so great, where the Protector shall be chosen only by the Council.

5. Besides, it was objected, that to have this in the Council

only, would be too strong, and too great a temptation upon them.

A few may choose sooner, but a multitude were like to choose safer, for in a multitude of counsellors there is wisdom. A few will be easier cajoled or corrupted than a great many.

If the election be in the Council, they are persons certain and known, who may be prepared and courted in elections, to serve particular interests, which cannot be supposed in a Parliament.

They are persons not known who they shall be, before they are chosen, and so can have no preoccupancies nor applications made unto them beforehand. And they are so many, as it would be a vain and impracticable thing to prepare or corrupt them, if any should never so much endeavour it.

6. The danger of introducing the line of Charles Stuart would, for the former reasons, be very great; because they are easy to be cajoled or corrupted to serve his interest, being but twenty-one at most; and nine of them being, by the present constitution, to make a Council; and five being the major-part of nine, it is but the making of five of the eminent persons of the Council, and Charles Stuart's business would be done.

It could not be doubted he would bid high for a Restoration. He would willingly part with two kingdoms for the third; and two such kingdoms would be a competent bait to satisfy the ambition of five counsellors, though never so chaste. And it is very possible that in three years, twelve of the Council may possibly die, and then, nine are the only Council left; of which nine, five will be the major-part, as before. But possibly, thirteen of the Council may die; and then no Protector can be chosen at all, for want of a Council.

7. All other inconveniences and objections that can be made against the election by the Parliament, and for the Council, are as broad as long, and will hold with as much strength against the Council as the Parliament.

8. It may seem not so fit in so great a trust, that the

Council should choose, considering that the Council are not nominated by the Parliament, but approved only; and the trust of the election is agreed on all hands to be in the Parliament.

9. As it is now resolved the Protector is to choose the Council; and if the Council choose the Protector too, it may seem not altogether so equitable and convenient to reason.

10. For the great objection of the army, that is agreed necessary, however, to be kept up to secure the new government against the old interest; and therefore, if the election were not thus, we could not expect the army should be disbanded.

11. The argument from an inconveniency of an interregnum, might easily be solved by putting the administration of the government, or it, into the Council, during the vacancy; and for administration of justice, all commissions, both of judges and justices, may be continued by an Act of Parliament, notwithstanding the death of the Protector.

These were the most general arguments which were used by those who argued to have the election in the Parliament, and the answers to such objections as were made against it.

On the other side, the reasons and the arguments why the election should rather be in the Council than in the Parliament, even sitting the Parliament, were many and weighty; the most considerable whereof, so near as I can remember, were these which follow.

For the Council.

1. The great danger there would be in so long an interregnum, as must needs be, if the election be placed in the Parliament.

2. The great difficulty of calling and convening the Parliament, as it is especially now constituted, in regard of Scotland and Ireland, and the great prejudice which may happen before a Parliament can be called.

3. When a Parliament is called, and no single person in being to be a check upon them, they may then perpetuate

themselves and vote a new government; or, at least, take all by survivor.

4. It must needs be long and difficult, before a Parliament can be thought to agree upon any one single person; their judgment being, in all probability, so different as they are like to be, and their affections as strong to persons of their several interests. Which must needs beget both extreme delays, and strifes, and discontents, when so many interests shall strive for it, and but one can have it.

5. In future times, when all parties are restored to freedom of elections, it may so happen, as we may have a Cavalier Parliament, which may, possibly, endanger the bringing in again of Charles Stuart or his family.

6. To prevent which, and to provide that elections be well regulated, it will be necessary to keep up a constant and considerable army, which will prove as considerable a charge.

7. If an army must be kept up, there will be as great a fear, that the army will, if not engross, yet always oversway and overawe the election.

8. A Parliament will be easier violated by force than a Council.

9. In case an election made by Parliament, should once be overborne, it will necessarily occasion the overbearing, if not the destruction even of Parliaments themselves. For he that shall come in, contrary to, and against the election of Parliament, will never have cause to be in love with Parliaments.

10. Parliaments are ever apt to be factious, and factions in Parliament are seldom but destructive wars; not so Councils, because they may be reconciled again by a Parliament. But who shall reconcile a Parliament? especially when there is no check upon them. A Parliament may be arbiter or judge of others' differences, but who shall arbitrate theirs?

11. When Parliaments meddle in personal things, they ever jangle and differ, and therefore, the wisdom of Parliaments hath ever avoided it as much as may be.

12. Seeking to bring too much, especially personal business to the Parliament, will be the destruction of it.

13. As it is sooner, so it is easier done by a Council, and by a few than by many. It is not probable that a few persons, especially such whose interests, by long acquaintance and a joint employment in business, have united in understandings and affections, should differ so much, or more, than 400 persons drawn from several nations, strangers and unknown to one another, and coming wholly unprepared to such a business. Whereas, it cannot but be presumed that the Council upon any sickness or danger of the present Protector, have premeditated and advised beforehand, who shall be the succeeding Protector.

14. If the choice be in the Parliament, it was conceived that it could not but bring a great deal of danger, even to the life of the present Protector. For, when it shall be known that the next Parliament, or this present sitting, shall choose the Protector in case of death, some wicked or passionate person may attempt some violence upon the person of the Lord Protector, that so they may come to have a new one chosen by the Parliament, or rather that they may have none at all chosen, but leave the government in the Parliament alone, and so re-establish a Commonwealth.

15. It cannot be supposed but in Parliament many persons will, probably, be in nomination, and those in all likelihood of the most eminent in the whole nation. And, whereas it is most certain that but one only can have it, it will follow that all the rest that miss of it, must needs be disobliged by him that hath it. Which will occasion so many enemies, at least parties and factions, as will beget at last an immortal jealousy between them, and uneasiness to them both. He that is chosen will look upon them that stood in competition with him, as persons of as high interest in the affections of the Parliament as himself, and like to be his next successor, and they who have missed of it cannot but bear a regret in their minds, of the disappointment.

16. There may be rules given to a Council, concerning the election, rules by which they may be limited and restrained, or directed as the Parliament shall think fit, which rules the

Council dare not break. But the Parliament cannot be limited or restrained, let the choice be of one never so wicked or unfit, or even of Charles Stuart himself.

Notwithstanding all these arguments, which seemed to prefer the election by the Council before that of the Parliament, it was by many concluded, especially those who were for the hereditary way, that even this way, which was conceived the best that could be contrived, was yet but *ex malis minimum*, of evils, to take that which seemed to have least evil in it.

But the reasons for the Parliament, especially sitting the Parliament, did preponderate, and it was so voted accordingly.

Tuesday 24. The rest of the thirty-second article, concerning the manner of election and the qualifications, were referred to a Committee. The thirty-third article being formerly resolved, the thirty-fourth was debated,* and agreed, as it is in the article.

Accordingly, the Lord Deputy of Ireland, the Commissioners of the Seal, the Commissioners of the Treasury, and the Chief Justices, (being formerly nominated by the Lord Protector,) were this day approved in Parliament.†

Wednesday 25. Mr. Speaker kept the chair. It being formerly resolved that every Wednesday in the week the Speaker should keep the chair, to hear reports from Committees, and other business that should concern the public.

Accordingly, this day, the Reporter, Mr. Yorke, the Chairman of the Committee to whom the proceedings and powers of the Judges‡ at Salter's Hall were referred,§ did make report of several exorbitant and arbitrary powers that they

* "A Letter from his Highness, the Lord Protector, to Mr. Speaker, dated Oct. 5, 1654, and read that day, touching the approving of the Deputy of Ireland, Commissioners of the Great Seal, Commissioners of the Treasury, and the Chief Justices of both the benches, was now again read." *Journals.*

† See *Ibid.*

‡ "They are judges in their own cases; for the more of the prisoner's estate they judge to be sold, the more comes to themselves: which is a temptation, and makes them judges as well as parties." *Journals.*

§ *Supra*, p. xxxix.

find in the Act and Ordinances for relief of creditors and poor prisoners.*

After a whole day's debate, it was at length resolved to be suspended, and a new Bill to be brought in with all speed, to afford just relief in the same cases.†

Thursday 26. The thirty-fifth Article of the government was taken into debate and voted, that the true Christian Religion contained in the Scripture, be held forth and recommended as the public profession of these nations, and that the present maintenance of ministers shall not be taken away nor impeached, until some provision, less subject to scruple and contention, be made for them.‡

Friday 27, *Saturday* 28. Wholly spent upon the debate of the thirty-sixth Article.§ The House being much divided, nothing was, either day, resolved, but adjourned over until Monday next.

Monday 30. The matter of the thirty-sixth, thirty-seventh, and thirty-eighth articles, concerning indemnity to all that cannot subscribe to the public profession, and toleration to tender consciences, was again in debate. Nothing being concluded upon, at length, after a whole day's debate, it was referred to a sub-committee‖ to draw up a question upon all the three articles, and to present it to the House upon Wednesday next for their debate.¶

* Corrected from the *Journals*.

† "*Yeas*, 115. Mr. Cromwell and Colonel Jephson, Tellers. *Noes*, 80. Sir Charles Wolseley and Colonel Clark, Tellers." *Journals*.

‡ Not in the *Journals*. See *Ordinances* (1654), p. 42; *Parl. Hist.* xx. 261.

§ "That to the public profession held forth, none shall be compelled by penalties or otherwise, but that endeavours be used to win them by sound doctrine, and the example of a good conversation." *Ordinances*, (1654) p. 43; *Parl. Hist.* xx. 261.

‖ Of which there is no notice in the *Journals*, except Oct. 31. "Ordered that the Sub-Committee for Religion, have liberty to sit this afternoon notwithstanding the Grand Committee for Trade do sit."

¶ "October 30. The new Lord Mayor, Alderman Packe, took his oath before the Barons of the Exchequer." *Whitlock*, p. 589. See *infra*, p. 378.

Tuesday 31. Several petitions were presented to the House.*

Wednesday, November 1. The sub-Committee, to whom the three articles were referred, brought in a question. Being a long time debated upon, it was generally apprehended more difficult than any thing that had been formerly propounded.

Finding an unlikelihood of drawing to any good agreement about it, it was resolved to appoint a Sub-Committee of ten to attend upon the Lord Protector, and to advise with him about some probable means of reconcilement. Which was done accordingly.†

"Westminster, October 26, 27, 28, 30, 1654. The Parliament sat each day in a Grand Committee, upon that part of the government, which relates to religion, and went through the 14 Articles of Faith, published by the late Assembly of Divines.

This last day, Alderman Pack [See *infra*, p. 378,] was sworn Lord Mayor in the Exchequer, and the day was observed in London with usual solemnities." See "The Observator, with a Summary of Intelligence," (1654) p. 16.

* One from "Sir William Killegrew and others, the participants, adventurers, and purchasers, with Robert, Earl of Lindsey, deceased, in his draining the fens in Lincolnshire, lying between Bournê, Boston, and Lincoln, and up to Trent River." *Journals.*

"Resolved, that it be referred to a Committee to bring in a Bill for the further confirmation of those votes of Parliament, for taking away the Court of Wards." *Ibid.*

"Oct. 31. Voted by the Parliament, that any natives of the Commonwealth may transport wheat, when the price shall not exceed 36*s*. the quarter, paying 4*d*. the quarter, custom: and rye, when it exceeds not 24*s*. paying 3*d*. custom: and barley or malt, when it exceeds not 20*s*. paying 2*d*. custom: and pease, not being above 24*s*. paying 3*d*. custom: and beans, not being above 24*s*. paying 3*d*. custom.

"The corn to be transported in vessels of this Commonwealth.

"Butter to be transported, when it is not above 6*d*. the pound. A Bill to be brought in for this purpose." *Whitlock*, p. 589. See *Journals*.

On the transportation of butter the House was divided. The *Yeas* went forth. *Yeas*, 92. Lord Broghill and Mr. Guys, Tellers. *Noes*, 62, Alderman Gibbs and Sir Charles Wolseley, Tellers.

† "The officers of the army met at St. James's, to keep a day of praying together.

"A committee of ten persons were appointed to confer with his

Thursday 2. The fortieth article* was debated, and for the most part agreed unto.†

Friday 3. The Petitions of Sir John Stowell,‡ the Lord Craven,‡ and others, who had appeals depending concerning the said fortieth Article were read and debated, and referred to a Committee.§

Saturday 4. The forty-first and forty-second Articles concerning the Lord Protector's, and the Council's oaths were debated, and the drawing up of the oaths referred to a Committee.

A Petition from the Civil Law Doctors for continuance and some encouragement, referred to a Committee, for regulating the law which was appointed immediately before.||

Highness, about stating the point of liberty of conscience." *Whitlock*, p. 590.

"Resolved that Mr. Vines and Mr. Manton be desired to preach before the Parliament, at Margarett's, Westminster, on next Lord's Day, being the fifth of November." *Journals.*

Of Mr. Manton, see vol. ii. p. 311, *note*. Mr. Vines, who died in 1655, had lost the mastership of Pembroke-Hall, Cambridge, in 165 for refusing the engagement, (See vol. ii. p. 279 *note* *.)

"The Parliament," says *Neal*, "employed him in all their treaties with the King; and his Majesty valued him for his ingenuity, seldom speaking to him without touching his hat, which Mr. Vines returned with most respectful language and gestures." *History of Puritans*, (1822) iv. 118.

* "That the Articles given to, or made with, the enemy, and afterwards confirmed by Parliament, shall be performed and made good to the persons concerned therein. And that such appeals as were depending in the last Parliament, for relief concerning Bills of Sale of Delinquents' Estates, may be heard and determined the next Parliament."

† Not in *Journals*.

‡ See vol. ii. pp. 125-130.

§ "The Parliament sat upon the Articles of Government, and voted the forfeiture of lands for treason and delinquency." *Whitlock*, p. 590.

"The humble petition of Wm. Earl of Salisbury, was this day read.

"Resolved, that it be referred to a Committee to consider how the 5360*l*. 18*s*. 4*d*. due to the Earl of Salisbury may be satisfied.

"Ordered, that it be referred to a Committee to consider of the abuses of *certioraris* and *habeas-corpus*, and of fit remedies for redress thereof; with power to consider of all the abuses in the law-courts, and to present their opinion to the House." *Journals*. See vol. ii. p. 419 *note* ‡.

|| See *Journals*.

Resolved, that a report be made, on Tuesday next, from the Grand Committee upon the Government, to the House, of such things as shall have been then resolved upon in that Committee.*

Monday 6. A bill was brought in for the ejecting scandalous, ignorant, and insufficient ministers and school-masters, and read the first time.

It was moved,† that the former Ordinance of the Lord Protector, to the same purpose,‡ be suspended; but could not prevail.§

Tuesday 7.‖ The report was made¶ from the Grand Committee of the whole House, upon the Government, according to former order.**

It was moved that the first article†† be debated in the House, and settled, according to the vote of the Grand Committee. But, it being objected, on the other side, that the twenty-fourth article, concerning the Protector's negative, had not at all been debated; that it had some considerable reference and influence upon the first article; and that, therefore, it was necessary to debate that article first. Thereupon, after a long debate, it was resolved to lay that debate aside,‡‡ and to proceed with the twenty-fourth article, the next day.

* "Order for all accounts to be brought in, of the value of all customs and receipts in several offices." *Whitlock*, p. 590.

† By Mr. James Ash, from the Committee. *Journals.*

‡ "Aug. 29, 1654." *Ordinances*, (1654,) pp. 593–633.

§ "*Noes*, 77. General Disbrowe and Lord Broghill, Tellers. *Yeas*, 67. Mr. Bulkeley and Mr. Hollis, Tellers." *Journals.*

‖ "Nov. 7, 1654. London. Great rumours have been, this week, about the City, of discontents in the seamen, and a petition; all which amount to no more but this, that they have drawn a petition, wherein they pray only that they may not be impressed to serve, but be as free as the Dutch seamen, and hired as they are. Both they and the fleet are in a very orderly equipage." *Observator*, p. 32. See Vol. ii. p. 78, *note* *. See, also, *Journals*, March 8, 1652, 3.

¶ By Mr. Hoskins. *Journals.*

** See *Journals; Parl. Hist.* xx. 377.

†† Concerning "the supreme legislative authority."

‡‡ "While this was in debate, Colonel Shapcot acquainted the House, that there is a printed pamphlet scattered abroad, tending much to the

Wednesday 8. The House* did enter upon the debate of the twenty-fourth article, and could not agree with the negatives, in certain, but passed the article, with this proviso, viz. "that such Bills shall not contain any thing contrary to such negatives as shall be afterwards agreed upon in Parliament, to be given to the Lord Protector."

Thursday 9. Mr. Speaker kept the chair.

The Grand Committee reported the twenty-fourth article. Then, the House proceeded upon the debate of the first article, as it was reported from the Grand Committee.

Having debated the settling of the legislative power, until past two of the clock, they could come to no resolution. At length, it was resolved to debate this article and the twenty-fourth together, and so adjourn the debate until the next day.†

Friday 10. They did strive to have debated the articles apart or single, and much discourse was spent, which of the two articles should have precedency, and whether they should not proceed first of all upon the negatives. But that was rejected, in regard the negatives were like to take up too much of our time; and in truth, the negatives, especially that of religion, were not reported to the House.

For the debating of them singly, it was said that it could not be agreed which should precede, and neither part could yield the precedency, without just jealousy. For, if the first

scandal of the said Colonel, and to the dishonour of the Lord Protector, and of the Parliament. Which he delivered into the House; and was, by command of the House, now read: and was intituled, 'The Speech of Colonel Shapcot, a Knight of Devonshire.'

"Resolved, that this paper is treasonable, false, scandalous, and malicious.

"Ordered, that it be referred to the Committee for Printing, to inquire after the author, printer, and publishers of this paper, and to suppress the same, and secure any persons whom they conceive to be, or that shall appear to be, guilty of framing, contriving, printing, or publishing the said paper.

"Ordered, that the Serjeant-at-Arms do forthwith seize, or cause to be seized, all the printed copies of the said paper." *Journals.*

* Probably in a Grand Committee.

† "*Yeas*, 103. Lord Broghill and General Disbrowe, Tellers. *Noes*, 89. Sir Richard Onslow and Colonel Birch, Tellers." *Journals.*

article were voted alone, that might give just jealousy to the Parliament, after they had placed an absolute co-ordination in the legislative power, in the Lord Protector, in all things, that it might be suspected whether he would ever condescend to be after restrained to certain particulars and negatives.

Others, upon other principles, did not think it fit to place any negative voice at all, radically, in the Lord Protector, but only so far forth as he should receive them of the concession of the Parliament. It was said, with reason, that we could never be too jealous of every power that might, at any time, invade or infringe either our liberty or our religion.

On the other side, it was objected, that the Protector had as great cause to be jealous, in case we should first proceed upon the twenty-fourth article; for that did place the legislative power absolutely in the Parliament, and left it at courtesy, whether the Parliament would after concede any negatives to him. Since there were such jealousies on both sides, it was conceived necessary, to cure them, that there should be some trust and some confidence in one another.

General Disbrowe argued, that the Parliament had no cause to be jealous, to trust the Lord Protector with the half, that not long since had the whole, and might have kept it without any competitor. He had power to have done it, and yet he hath given us some part of it, and in truth, we have not an opportunity to do what we will; but to amend the Government only where (in effect) he would give us leave.

To which it was answered, that, if a trust must be, it was not known where better to place it, than in the Parliament. What reason had the Protector to distrust the Parliament? They were not like to do him any prejudice in his negatives, especially having before declared their willingness to place those negatives in him, which he himself desired, viz. in those four main points. 1. Of altering the government. 2. Of perpetuating Parliaments. 3. Of the militia. 4. Of imposing upon tender consciences.

If the Protector hath a negative in himself, from whom had he it? If he derives it from the late government, and as it was in the late King, certainly the Parliament did then fight

with him for it,* and, upon the appeal, God determined the right for the Parliament. And if it were not in the Parliament, we are all the greatest traitors in the world.

If all be devolved upon the Lord Protector, and he hath given us a part of it, truly there may be some reason in what is said. If we sit here, at his courtesy, we may be unseated at his mercy. If we be a mere elemosynary Parliament we are bound to do his drudgery. But then, if he expects it ever from a free people, he had better have taken it, first, to himself, and declared us his slaves, and then we might have been persuaded into such a servile compliance.†

But, since we think ourselves yet free, and have fought as well, and as much as he, for our freedom, either he must take it and hold it by the same power by which he thinks he hath got it, or must never expect that freemen will ever give it. And, upon this account we must break ‡——, there is no Englishmen but will rather part with his life, his liberty, his estate, and all his loose garments, than with the just rights and freedoms of the people.

But there is no end of this. The Lord Protector hath called, he hath called us a Parliament. In that, he hath called us to that right, and to that privilege which we now claim, and in that, he hath given us the power of it.

For the legislature was ever in the people, represented in Parliament, and Kings had only deliberation, and as mere *per interesse suo*, in regard of the regalities, which they will be careful not to pass away by any laws. Therefore, they had the survey, and, perhaps, advice in all.

Upon these, and other weighty considerations, it was, at

* See vol. ii. p. 451, *ad fin.*

† Father Orleans, referring to "l'esprit et l'amour de la Republique," discovered in this Parliament, says:

"Quelqu'un même osa dire tout haut, que puisqu'on se rapprochoit tant du gouvernement monarchique, il valoit bien mieux le laisser continuer dans la Maison Royale qui en étoit en possession, que d'en revêtir un particulier qui n'y pouvoit pretendre aucun droit." *Revolutions d'Angleterre,* (1694) iii. 296.

‡ Here follows, in the MS. "what God determines, or judges again between us," probably a parenthesis incompletely copied in 1720.

length, about four of the clock, resolved that the question be put upon both the articles joined together, and being joined together it was voted.*

Art. 1. That the Supreme Legislative authority of this Commonwealth of England, Scotland, and Ireland, and the dominions thereto belonging, is, and shall reside in one person, and the people assembled in Parliament.

Art. 2. And that all Bills agreed unto by the Parliament shall be presented to the said single person for his consent. And, in case he shall not give his consent thereunto, within twenty days after they shall be presented to him, or give satisfaction to the Parliament within the time limited, that then such bills shall pass into, and become laws, although he shall not give his consent thereunto. Provided such Bills contain nothing in them contrary to such matters wherein the Parliament shall think fit to give a negative to the Lord Protector.

Which vote being so passed,† it was presently moved by that party who carried the vote, that, to avoid all jealousies and fears, it be put to the question, that this vote shall not in any thing be prejudicial or binding at all, until the whole government be passed into a Bill. But the Court-party, against whom the vote was carried, were so much dissatisfied, and, indeed, so impatient, that the subsequent question, which they would have been contented, and did strive to have previous, would not now content them.

It was said by them, that this vote had destroyed the Government. The very foundation upon which we rest would receive so great a wound by it, as nothing now that we could do, subsequently, could cure it. We had, as much as a vote

* *Noes*, 85. Sir Charles Wolseley and Lord Broghill, Tellers. *Yeas*, 109. Sir Richard Onslow and Colonel John Birch, Tellers." *Journals.*

† "The House calling to have the vote read; the question being put that candles be brought in, the House was divided. *Noes*, 76. Colonel Morley and Sir Charles Wolseley, Tellers. *Yeas*, 85. Lord Broghill and Colonel Harvey, Tellers.

"Candles being brought in, the vote was read; and some exceptions were taken to some words in the vote, which were now debated." *Journals.*

could do, unmade the Protector. So fatal, and so mortal was this wound to the Government, in the opinion of some, that one, a person of honour and nobility,* did wish he could have redeemed that wound with a pound of the best blood in his body.

It was often and soberly pressed by the other side, that they saw no cause for such tragical apprehensions, that the fears seemed panic, and the wound they spake of, invisible; or if there were a wound indeed, yet the same hand that gave it might cure it, by this subsequent vote, which was again offered. Yet nothing would satisfy the court-party, but in great confusion and discontent, they cried out for an adjournment, giving the whole business lost, and presaging an ominous and sudden dissolution.

But, after some heats were over, the more moderate of either side fell to expedients. Amongst which, some were inconsequent things, and destructive wholly to the former vote. But, in fine, the words in the last part of that vote, which was the proviso, were those which they took most offence at, namely, wherein the Parliament shall think to give a negative, &c. Instead of which, it was proposed,

1. To change the word "give" into "declare."

2. Whereas the Parliament is named alone, in the proviso, to declare the negatives, it was desired that the single person might be joined with them.

But these propositions being new matter, and seeming contrary to the former vote, and it being then near seven o'clock, and many were fasting all day, and very impatient, and the business seeming to be of some difficulty and weight, it was therefore moved by the anti-court party, to adjourn the debate. Which, afterwards, with difficulty was obtained, until the next morning.

Saturday 11. It was moved, that the former amendments be added to the former vote of yesterday. Some, to further the motion, pretended that they themselves had been, the

* Probably Lord Broghill, who was now a favourite courtier at Whitehall. See *infra*, p. 357, *note* †.

night before, surprised in the question, and did not think it had carried such a consequence in the manner of it. Others talked of fears and imminent dangers. To both which, a member replied, something earnestly, saying, as to the first, he conceived it not Parliamentary, to retract a vote upon a *non putarem;* for such as sate there were all supposed to be wise men, *et incipientis est, dicere non putarem,* and for the other arguments, of fears and jealousies, he conceived they were but bugbears and brain-squirts, things not to affright such an assembly into any change in their councils; which gave such offence and scandal to the court-party, as they questioned the gentleman for it.

Some ado there was to have had him to the bar; but some excused him, and one especially, tartly enough, upon that old ground of *nemo mortalium omnibus horis sapit,* which was, a Rowland for an Oliver. Others desired that he might but explain himself. To which it was answered, that that needed not. The gentleman that spoke before, had done it for him.

After they had made themselves a little merry with these puns, at length they fell into a more serious consideration of the point. Some conceived, that such amendment took away, in effect, the whole force and intention of the former vote, and thereupon they launched into the very merits of the thing, discoursing over again the very right of the legislature. Wherein one argument more than was formerly used, was urged, namely, not to question where the legislature was, in time of kingship, whether in the King alone, or Parliament alone, or in both, co-ordinately.

This was plain, that the government by kingship was, and is, and stands dissolved. After which, we either fell into the government of a Commonwealth, by Parliaments, or, if no government at all, this right of legislature will clearly be determined. For, in the first case, it was, *de facto,* in the Parliament, and if it were not also *de jure,* then it could be nowhere but in the people. In kingship it could not be; for that, on all sides, is agreed to be dissolved.

Then if it were *de facto et de jure* both, in the Parliament,

at that time, there seems no reason but that it should be so still. But if, *de jure*, it be devolved upon the people, as much reason might be shown for it, it would then gladly be known how they lost it. They have neither forfeited it, nor hath it been taken from them by any just power.

To say that my Lord Protector, by power, hath obtained it for himself,* that cannot be; for he was but engaged with the people, and by the people, for the redeeming this very right out of the hands of the late King. He hath been so far from conquering this right from the people, as he did but fight in their company, and by their command, for the recovery of it.

To say, that now he hath it by Providence; that argument is but like to a two-edged sword, and a thief may lay as good a title to every purse he takes upon the highway. Besides, it is a rule, even in divinity, that Providence alone may settle possessions; but not confer rights.

However, the Lord Protector hath no cause to quarrel at the word, "give," since nothing can be so quietly and honourably enjoyed, as that which is given by the Parliament. And certainly, unless it be given by the Parliament, he cannot justly have it; for, without doubt, the right of legislature is naturally, inherently, and inseparably in the people, and consequently, in their representatives in Parliament.

To say that there was one before there were many, and consequently, that the legislative power was first in that one, is vain, and of no great value. To instance in Adam is as impertinent, since Adam's right was paternal, and not despotical. But when the world increased, and government, more general than that of a family, was thought necessary, the people chose that Government.†

* As asserted by General Disbrowe, *supra*, p. lxiv.

† Here is probably a design of controverting the following monarchical doctrines of Sir Robert Filmer, since so ably exposed and refuted by *Sidney*, in those *Discourses*, for which the restored Stuart, the hero of Filmer, perpetrated the judicial murder of the patriot; and afterwards by *Locke*, in his Treatise on Government:—

"Not only Adam, but the succeeding patriarchs, had, by right of brotherhood, royal authority over their children. And the subjection of

Thus it was in the Jewish Government,* and in the Roman too; for it is clear in reason, that no man can, *de jure*, obtain a dominion over another man's person, without his own consent. Men are not like sheep under a shepherd, where the dignity of the kind may justly challenge superiority and dominion over the inferior kind, in regard of the great difference of the species. But we are all rational, all equal, all made of the same mould, and in that respect, no man, *in puris naturalibus*, can be preferred before another, nor one man's person be more excellent than another.

But, whilst these discourses were carried on with some earnestness, by some persons, that were tender and jealous of the people's interest, they minded not how little that was concerned in the point in question. For, in truth, the people's rights were sufficiently asserted in what they had already voted.

Therefore, it being sufficiently settled in the Parliament, it could be no diminution to them to part, at this time, with that which, in no time, was fit for them to exercise. And yet, they needed not, in truth, to part with any thing, but only declare, or rather seem that something might be declared by them, wherein the Protector might have a negative.

Which, being observed by some of the slighter sort of patriots, and the amendment being pressed upon the House again, as that which was thought would give satisfaction, at length the question was put for the amendment. It was agreed unto, *nemine contradicente*, so as the proviso then amended, ran thus:—

Provided that such Bills contain nothing in them contrary

children being the fountain of all regal authority, by the ordination of God himself: it follows that civil power not only in general is by divine institution, but even the assignment of it specifically to the eldest parents. Which quite takes away that new and common distinction, which refers only power universal and absolute to God; but power respective in regard of the special from of Government to the choice of the people." See "Patriarcha, or the Natural Power of Kings." (1680) p. 12. This author appears to more advantage, *infra*, p. 26, *note*.

* See Fleming's "History of Hereditary Right," *passim*.

to such matters, wherein the said single person and the Parliament shall think fit to declare a negative to be in the said single person.*

Monday 18. The Grand Committee did sit to receive reports.

The Committee, to whom the form of the writ of summons to future Parliaments was referred, made their report, and brought in the form of the writ.

There were some alterations agreed in it. Amongst the rest, that clause which excludes the election of the Sheriff, was altered. Whereas, before, the Sheriff, and all other Sheriffs, were incapable of being chosen in any place, the clause was altered so, as he might be chosen any where, but as a knight for his own county. In any other county, he might be chosen knight, and a burgess in his own county.

For heretofore, it was a practice of the Court, when they did foresee that a Parliament was to be called, and that there were some eminent persons that were patriots in their several counties, that those persons should be sure to be made Sheriffs, to prevent their election. And being capable to be chosen sheriffs every third year, there was one Sir Thomas Read was chosen Sheriff three times in nine years, to prevent him, lest he might have been chosen into the Parliament.

Sir Edward Coke was likewise so chosen Sheriff for Norfolk;† but at the same time, was also chosen a Parliament-

* See *Journals; Parl. Hist.* xx. 379.

† 1 *Caroli*, 1625. "The mighty Buckingham," says Roger Coke, "was resolved to keep Sir Edward Coke, Sir Robert Phillips, and Sir Thomas Wentworth [afterwards Lord Strafford,] out of the Commons House by the King's prerogative, (as it has been of late used,) in making them Sheriffs, whether they be returned by the Coroner's inquest of the counties, or not; and by this prerogative, Sir Edward Coke was made Sheriff of the county of Bucks, Sir Robert Phillips, of Somerset, and Sir Thomas Wentworth, of Yorkshire.

"It made a mighty noise and an inquiry, which otherwise would not have been, that Sir Edward Coke, in his extreme age, now seventy-seven years old, and who had been Chief Justice of both Benches, and Privy Councillor, should be made a Sheriff of the county, and the more for that Sir Edward Coke took exception to the oath of a Sheriff, whereupon it was altered." *Detection*, (1697,) p. 180.

man, and a Knight of the Shire for Buckinghamshire. But, query, whether he then served.*

But one Mr. Long, at the same time, being made High Sheriff of Wiltshire, was chosen a burgess for Bath, in another county, and served in Parliament. But, after the Parliament was done, a Bill was exhibited against him in the Star-Chamber, for not residing in his own county, during the time of his Shrievalty. To which Mr. Long did demur, but it was overruled, and a great fine set upon him, and levied. Which sentence of the Star-Chamber,† it is true, was afterwards reversed in Parliament, and reparations given to Mr. Long for his damage,‡ and this very case, was one of the principal inducements for the pulling down of that Court.

The case of Sir Simon D'Ewes, was likewise quoted; who, being Sheriff of Suffolk, was in his Shrievalty, chosen a burgess for the town of Sudbury, in the same county, and, as it was affirmed, he did sit even while he was Sheriff.‡

"Sir Edward Coke," says *Whitlock*, "and other gentlemen, who had appeared the last Parliament against the Duke, were made Sheriffs, and so could not be chosen Parliament-men. Coke excepted against several parts of the Sheriff's oath, and, by advice of all the Judges, one of his objections was allowed, to wit, the clause *to destroy Lollards*, which, by order of the King and Council, was left out of the oath, and so continues." *Memorials*, (1732,) p. 2. See Rushworth's *Hist. Col.* (1703,) i. 127; *Parl. Hist.* (1763,) vi. 421—425.

* He was probably excluded. See *ibid*, p. 425. In the second Parliament of Charles, (1628,) Sir Edward Coke and Sir Robert Phillips, were frequent speakers. See *Rushworth*, i. 316, &c.

† "To be committed to the Tower during his Majesty's pleasure; to pay a fine of 2000 marks to the King; and to make his submission in the Court of Star-Chamber, and to his Majesty." *Ibid.* p. 447. See Coke's *Detection*, p. 234; *Parl. Hist.* (1763,) viii. 378—381.

‡ "January 18, 1646-7. Mr. Walter Long, 5000*l.* for his damages, losses, imprisonments, and sufferings." *Ibid.* (1755,) xv. 27.

"August 26, 1647," says *Whitlock*, "upon debate of a message from the eleven members charged by the army, the House at last agreed to it, and they all left the House. Mr. Hollis, Sir Philip Stapleton, and Mr. Long, went together in a ship to France." *Memorials*, p. 259.

‡ "He was returned by himself," in 1640, to the Long Parliament. *Brit. Biog.* (1769,) v. 190.

And in this very Parliament, Mr. Charles Howard himself moved in the question for some opinion of the House, because himself and some others, as he affirmed, were Sheriffs; but I think it was in Scotland.*

And it was affirmed also, that some Shrievalties, (as of Westmoreland) were so by inheritance, and such persons, by such a clause, would be made incapable for ever. Besides, mayors of corporations are eligible, and yet they are the only judges, upon the view, and make the immediate return to the sheriff.

For all these reasons, it was voted and resolved to alter the clause, as to the sheriffs, to the same purpose as before, viz., that they may be chosen any where; but only as Knights for their own county.

Tuesday 14. The Speaker being in the Chair, the House fell to debate such negatives as they should think fit to declare to be in the single person, and voted

1. That if any Bill be tendered at any time, hereafter, to alter the foundation and the constitution of the government of this Commonwealth from a single person and a Parliament, that to such Bills the single person shall have a negative.

It was then moved that the effect of this vote be inserted into the Lord Protector's oath, and the thing partly agreed unto. But, in regard that the oath was reported from the Committee, and this might occasion some debate and so divert the present business, which was the settling of the negatives, this thing was put off, and laid aside, until the oath itself should come to be considered of.†

The next thing that was entered upon, was the debate of

* "Charles Howard" was now member for "Cumberland." *Parl. Hist.* xx. 298.

† "The question being put, that the House doth now proceed upon the debate, of the consideration of the oath to be taken by the single person, and such persons, as shall sit and serve in Parliament, that they shall not consent to alter the government, by one single person and a Parliament,

"The House was divided. The *Yeas* went forth. *Yeas*, 76, Lord Lambert and Sir Charles Wolseley, Tellers. *Noes*, 85, Sir Ralph Hare and Colonel Rous, Tellers." *Journals.*

perpetuity of Parliaments, in which the House seemed very unanimous that Parliaments should not be perpetual, that is, should not have power to perpetuate themselves, or not to be dissolved without their own consent.

Whereupon, the question was put, that if any Bill shall be tendered, at any time hereafter for the continuance of any Parliament, for any longer time than for six months after the first meeting, to such Bills the Parliament doth declare a negative shall be in the single person.

To which question, exception being taken at the word "shall," it was moved that, instead of those words, "shall be," it be thus altered, "to be," that is, "to such bills the Parliament doth declare a negative to be in the single person."

But, that seeming to imply an inherency of right as to such a negative to be in the Lord Protector, which all along hath been denied and carefully declined, and the thing being, without question, a new thing, and a new right, which was never before settled in the single person, for these reasons that alteration was much opposed, and being put to the question, was carried in the negative.*

After which, the first question being endeavoured to be put, it was much opposed by the Court-party, upon that very account, because they would not be satisfied with the thing, unless they might be declared by the Parliament as an inherent right in the Lord Protector. They insisted upon it with as much earnestness, as they did upon the vote on Friday night,† putting all the weight and stress of the whole interest of the Lord Protector, upon the difference of these two little words, "to be," and, "shall be."

Which being understood by the House, which seemed, generally, unsatisfied with it, and striving on both sides, the one to have the question, the other, the alteration, at length the House adjourned, without coming to any question.‡

* *Yeas*, 89, Lord Broghill and Sir Charles Wolseley, Tellers. *Noes*, 96, Colonel John Birch and Mr. Bulkeley, Tellers." *Journals.*

† See *supra*, pp. lxvi. lxvii.

‡ "Resolved, that this debate be adjourned until to-morrow morning eight of clock." *Journals.*

Wednesday 15. The House being early met, and the Speaker in the chair, the debate, which was adjourned over night, was again resumed, and presently an expedient was proposed, which was thus, that, instead of the latter part of the question, viz., To such Bill the Parliament doth declare that a negative shall be in the single person, it was proposed thus, viz., That such Bill shall not pass into nor become law without the consent of the single person, so as the whole question, with this expedient, was thus propounded and resolved, viz.,

That if any Bill shall be tendered, at any time hereafter, for the continuance of any Parliament, for any longer time than for six months after the first meeting, such Bills shall not pass into nor become laws, without the consent of the single person. Which was voted accordingly.

After this vote, it was next debated whether they should not, in the next place, proceed upon the other negatives, viz., of the militia and religion.* It was thought fit, in regard the reports of them were not perfect, and because this day

* The Bible and the Sword. On the subject of religion, (far less naturally and justly comprehended in the business of legislation than the militia,) there was now, besides the Grand Committee of the whole House, a sub-Committee of creed-makers. This appears from the following entries, oddly placed among Parliamentary proceedings.

"Nov. 16. Mr. Nathaniel Bacon reports from the Grand Committee for Religion, their desire that the House would be pleased to give order for the providing of firing, candle, and other accommodations for the ministers with whom the sub-committee are to confer, touching a Confession of Faith.

"Resolved, that the Serjeant-at-Arms do take care to provide candle, firing, paper, ink, and other accommodations, for the ministers who sit in Jerusalem Chamber." *Journals*.

There is still a Committee for Religion, appointed at the commencement of every Parliament. Of the "candle, firing, paper, ink," expended during their theological lucubrations, or of the elucidations of Jewish or Christian antiquity, by the enquiries and deliberations of these biblical senators, I have not discovered any reports.

It is greatly to be desired, and may be reasonably expected, that the influence of science and useful learning should correct what Bishop Berkeley justly denounces as the "pedantry of courts and schools."

had been before designed for the assessments, to lay the negatives aside, for this day, and to fall upon the assessments, which accordingly was done.

At first, some little overtures were made, as if, perhaps, there might not be any necessity at all for an assessment. In consequence of that, it was desired that some scrutiny might be made, and some consideration had of what forces were necessary to be continued, and an inspection to be had of the revenue and the public treasury, that so, by reducing our charge and improving our stock, we might, if possible, make the one to answer the other, without an assessment.*

Then, the professors of religion, through all their varieties, and even of irreligion, (in the opinion of those who unscrupulously "judge another man's servant") while they "study to be quiet" may be allowed to "do their own business." The great minister Colbert, is said to have once invited the merchants of France to consider how commerce might be promoted by the patronage or control of government; when they wisely replied, "*Laisez nous faire.*"

* "To that end, it was proposed that the standing forces to be continued, according to the Instrument, were but 30,000, and the Lord Protector, in his speech, did intimate that he was not bound up to that number, but that if 10,000 foot and 5,000 horse would serve the turn, he should be satisfied. But, admit that 30,000 men should be the utmost establishment, it was conceived that 50,000*l.* *per mensem,* would defray that charge, which in the whole year might amount to 6 or 700,000*l.* That the charge of the Protector and the Government was to be 200,000*l.* *per annum.* And that in King James, and the late King's time, the charge of the navy did not ordinarily exceed 200,000*l.* *per annum,* which in all makes not above 1,100,000*l.* per annum. That heretofore, it is true, a great part of the land taxes were employed for the use of the navy, especially in the late war with the Dutch. But now, that charge being taken off, 400,000*l.* *per annum* which was extraordinarily employed in that service, may very well be employed towards the discharge of the land forces, more than formerly could be spared for them.

"But, at the rate propounded, 1,100,000*l.* *per annum* may seem to defray the ordinary charge, computing the land forces at 30,000 men, and the charge of the navy at 200,000*l.* *per annum,* so as for incidental charges and such extraordinaries, as may be rationally expected to happen, there will be an overplus of at least 1,100,000 more, out of the

These things being thus considered, it was hoped that England might pass without any assessment; or, at least, with as little as possible might be.

30,000*l.* *per mensem*, was at first proposed for England; but upon their consideration, it was hoped it might be less.

These things had been formerly committed to the consideration of a Committee, who were likewise to repair to the Protector for his advice, as they saw occasion. Therefore, it was thought fit to call for that Report. Which being not perfected, in regard much of it still rested in the breast of the Lord Protector, who had given no answer; so much as they had done was called for, and the Report of that being made,* they gave this short account.

ordinary and standing revenues without assessments, for so are the standing revenues estimated *communibus annis* 2,200,000*l.*

viz. in Excise and Customs . . .	1,100,000
Wine Office	———
Postmaster's Office	———
Probate Office	———

"But it was objected, that although 30,000 men might serve as an establishment of the land forces for England alone, yet, for Scotland and Ireland, a greater establishment must of necessity be required, until a better settlement and condition of affairs may be found out.

"To that it was proposed, that Scotland and Ireland, which had been the occasion hitherto of so much charge, might now at last be made to bear their own charge.

"That Ireland did bear 30,000*l.* *per mensem*, and should have borne 60,000*l.*.

"That Scotland did now bear 10,000*l.* *per mensem*, and might bear much more." *Goddard MS.*

* "Resolved, that Colonel Birch do make a report to the House of the proceedings of the Committee for retrenching the forces.

"Colonel Birch, accordingly, reports the proceedings of the said Committee, and their resolutions, after advice with eight officers, appointed by his Highness, touching the garrisons in England, which they conceived fit to be demolished, and which to be kept up; which the Committee thought fit to be presented to his Highness, the Lord Protector, and to desire his Highness to consider and direct what further abatement may be made of the forces in England, and of the garrisons and forces in Scot-

'1. That as to the sea-forces, some part of the sea-forces were already struck off, and the winter-guard reduced.

2. That upon consideration of the land forces, they fell first upon the garrisons in England; and considered what garrisons were fit to be demolished and dismantled, and what fit to be continued.*

Thursday 16. Something was debated, in relation to the voting of the style of the single person, which was to be Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions thereto belonging.

It was voted, that such of the forces as should be agreed to be continued, should, sitting the Parliament, be disposed by the Lord Protector, with the advice and consent of Parliament, for the peace and good of this Commonwealth.

Friday 17. It was voted that such of the standing forces of this Commonwealth, as shall be agreed to be continued, upon the charge of the Commonwealth, in the intervals of Parliament, shall be ordered and disposed of for the ends aforesaid, (the good of the Commonwealth,) in the intervals of Parliament, by this present Lord Protector, during his life, by and with the advice and consent of his Council, and not otherwise.

land and Ireland; and that they appointed a Sub-committee to attend his Highness therein: which was done, accordingly, but have not yet received an answer, therein, from his Highness." *Journals.*

* "The garrisons which they thought fit to be dismantled, demolished, and made untenable were these:—

"Bristol Castle and Fort, Denbigh, Taunton, Mersey-fort, Carnarvon, and Shrewsbury.

"The garrisons to be continued were: Tenby, Carmarthen, Liverpool, Chepstow, Beaumaris, Yarmouth, Jersey, Guernsey, Scilly, Isle of Man, Isle of Wight, Mount in Cornwall, Pendennis, St. Mawes, Cackut, Hurst, Plymouth, Portsmouth, Dover, Sandwich, Warmouth, Deal, Sandown, Tilbury, Languard Fort, Hull, Scarborough, Berwick, Carlisle, Tower of London, Windsor Castle, Portland, Kelso, Southsea, Tinmouth, Hascott in Suffolk." *Goddard MS.*

"Resolved, that it be referred back to the same Committee, forthwith, to attend his Highness, and receive his opinion in the particulars of the garrisons and fortresses of the Commonwealth." *Journals.*

In the next place, it was moved to debate, how and where the forces so to be continued should be ordered and disposed of, in case the Protector should happen to die in the intervals of Parliament.

But, this was thought a point of some difficulty, and also that other point of the militia, by which was meant the intrinsic force of the nation.*

This was heretofore, under trained bands, and commissions of array, and the like; and consisted sometimes, in the general tenures of the nation. How to settle this was a difficulty, as well as the standing forces, by which was meant only such forces, as upon extraordinary emergencies, and to supply the other, were raised, or to be raised by authority of Parliament, and to be maintained at the public charge.

Therefore, it was resolved to adjourn this debate, until to-morrow morning; against which time, the members of the Long Robe, that are Commissioners of the Seal, and Judges, that are members, may have notice to give their attendance.†

After which a Report was made from the Committee which was appointed ‡ to advise with the Protector, about an expedient upon those articles of Religion which refer to indemnity and toleration.

The substance whereof was to this purpose, that the Lord Protector was wholly dissatisfied with the thing, and had no propensity or inclination to it; and that the Parliament had already taken the Government abroad, (in pieces was meant,) and had altered and changed it, in the other articles, as they pleased, without his advice; and therefore, it would not become him to give any advice at all, singly and apart, as to this article. But he commended the work, wished well to it, and told them that the sooner they could despatch the

* See vol. iii. p. 466, *note* *.

† "The Serjeant was ordered to give notice unto the Lords' Commissioners, judges, and lawyers, that are members of this House, to attend the service of the House, to-morrow morning." *Journals.*

‡ See *supra*, p. lx.

whole, it would be the better for the service, or to that effect.*

Saturday 18. The debate concerning the settling of the standing forces, in the intervals of Parliament, in case that the Lord Protector should then happen to die, and how they should be settled after his death, was again resumed, according to the order yesterday. Thereupon the question was thus framed.

That the said standing forces, after the death of the present Lord Protector, in the interval of Parliament, shall be, in the disposition, and ordering of the Council for the ends aforesaid, until a Parliament be assembled; and then the disposal of the said forces to be made by the Parliament, as they shall think fit.

This question being thus framed, there did seem to be a general concurrence, and the sense of the House was almost unanimous in it; and the long-robe men did none of them seem to oppose it, so as the question was generally called for.

But the courtiers and soldiers were not pleased with it. Some pretended that it referred to a Council, and to a Lord Protector after the death of this, neither of which were yet voted in the House. Therefore, they pretended they were not yet ready for it, although they had been both voted before in the Grand Committee.

Others of them confounded the standing forces with the militia, and would not understand any difference between them. Others argued, that to place the disposition of the standing forces in the Council alone, until the Parliament were called, although they should choose a Lord Protector, and when the Parliament was chosen, to place the disposing of them wholly in the Parliament, in both excluding the co-ordination of the Lord Protector, would be, in effect, to pull down the Government which we were going about to build, and to render the Protector a most insignificant nothing.

* The *Journals* have no account of this report, only, as the probable result of it, "Ordered that the Grand Committee for Religion do sit every Thursday in the afternoon."

On the contrary, it was answered, very clearly, that there was a plain difference between these forces and the militia. These were raised, at first, by the Parliament alone.

Therefore, although for many reasons, (namely, for the great and eminent desert of the present Lord Protector, whom we have had great experience of; and likewise, in regard of the present juncture of affairs, being yet in an unsettled condition; and a pretender yet fresh in being,) this Parliament thinks it fit and necessary to give an equal share in the disposing of the forces to the Lord Protector with the Parliament; yet, when this Protector is dead, and perhaps another shall not be so deserving, and of whom we have not had like experience whereupon to ground a confidence and trust; and when, perhaps, it will not be needful to continue any standing forces at all, in being, then there will be all the reason in the world for the Parliament to disband, if they shall think fit, those forces which they themselves had raised, or otherwise to dispose of them.

Otherwise, if we shall, by this law, place and state the standing forces, either in the next Protector and Council, or in him and the Parliament, what do we else do, but entail a standing force upon them, to all posterity? For it will be left in the will of the Protector, whether he will ever let them down again or no.

Besides, it will not seem so reasonable when, as it is intended, the succeeding Protector, though chosen by the Council, yet shall be approved by the Parliament. If it shall so fall out, that such a person be chosen, who may, perhaps, not be altogether so fit or so deserving of it, and then to back him, and presently to state him in the right of disposing of the forces, how will it be in the power of the Parliament to disapprove such an election, though never so unworthy, when, as the Protector shall have both *de facto* and *de jure*, an army at his back, ready raised and formed, to countenance and establish his election?

But if it shall please God that such a person be chosen, whom the Parliament shall approve of, and in whom they shall have cause to confide, no doubt, but that Parliament,

having the disposing of those forces in their hands, will do the same thing by such a Protector as they have done by this; that is, give him the disposing of them with their advice, and, in the interval of Parliament, by the advice of his Council. But to do this now by a law, before we know whom that person will be, or will be like to prove, is neither suitable to justice or reason.

Therefore the question is not, whether the succeeding Protector shall have the militia or the forces, if there shall be cause to continue them so long; but whether he shall have them by the Parliament, as a trust derived from them and reposed in them, for the good of the nation, or whether or no he shall have them by a right of inherency, and by a law that hath fundamentally so settled them in him.

These arguments being thus tossed up and down, to the great dissatisfaction of the Court, and the House being very strong and desirous to have the question put, the Court-party moved that this debate be adjourned until Monday morning. Which, to satisfy their importunity, was granted.

Monday 20. It was debated, whether these words, viz. "until a Parliament be assembled and then the disposal of the said forces to be made by the Parliament as they shall think fit," be part of the question, which had been debated the Saturday before.

1. It was objected against this, that we had already trusted the present Protector, and given him the co-ordination with us, and that it was not fit to give the Protector more than what we would give to another Protector.

To which it was answered, that it was great reason to trust a person of whom we have had so great experience, one whom we know so well, and one that had engaged in the same cause and quarrel with us, for the defence of our liberties, especially considering the posture of our affairs we are now in, the nation being yet unsettled, and an old title on foot ready to take hold of every opportunity to re-establish itself.

But there cannot be the same reason to trust a person whom we know not, of whom we yet have had no experience,

and in a time when perhaps our affairs will not be in the same condition they now are in. Because we have done it to this Protector, therefore we must do it to the rest, is no reason at all; unless it be reason, because a man had done an action upon consideration had of persons and times, therefore he is always bound to do the same actions, although the same circumstances of persons and times be never so much varied from what they were before.

2. It was objected, that to strip the next Protector of the command of the standing forces, were but to make him an insignificant nothing, a mere man of straw.

To which it was answered, that the standing forces were never meant to be in the single person, otherwise than by the consent of Parliament. It was the manner and custom of this nation, and of our ancestors, not to put our King in the head of an army, especially of a standing army, but in the head of their laws.

And, certainly, to place the command of the standing forces alone in the single person, or co-ordinately in him and the Parliament, would be to make the Parliament a mere *Jack-a-Lent*, and as insignificant a nothing as the single person, in case it should be placed only in the Parliament. For, give any single person in the world but power, and you give him a temptation to continue and engross that power wholly to himself, and an opportunity to effect it. For, as, wheresoever there is a co-ordination of power, there is a right, mutually, on both sides, to defend their interest, the one against the other; so, whensoever any advantage offers itself, the one will usurp on the other, and, in fine, strive totally to subvert it.

3. It was objected, that to exclude the Protector from the command of the standing forces, would be to give up the cause, that eminent and glorious cause, which had been so much and so long contended; for such Parliaments might hereafter be chosen as would betray the glorious cause of the people of God, &c.

To which it was answered, that if any cause were more glorious and more precious than another, the Parliament was

the most worthy to be intrusted with it. We had adventured our lives and liberties for the cause. We are not bound now to give away lives and liberties for an imaginary cause.

Therefore, as the question is framed, it seems fair enough to leave the trust in the Council, until the Parliament, and then to leave it in the Parliament. They who would have it otherwise, would state the future Protector in an absolute title, whether he will disband any part of the standing forces, yea or not.

Besides, it was said with a great deal of reason, that standing armies, at best, were dangerous;* but, if they be necessary, let us temper them with what allays we can.

For these, and several other great and weighty reasons, after the debate had continued until seven of the clock, at night, it was resolved that the clause should be added to the question. Afterwards, the whole question being put, it was:

Resolved, that the standing forces, after the death of the present Lord Protector, in the intervals of Parliament, shall be in the disposition and ordering of the Council, for the ends aforesaid, until a Parliament be assembled, and then the disposal of the said forces to be made by the Parliament as they shall think fit.

Tuesday 21. The House resumed the debate concerning the assessments. Some proposed, that for the ease of the nation in taxes, there might be some scrutiny into the ancient treasures, and that all persons that have had any hand in the public receipts, might be brought to give a good account, it being generally believed that much treasure would that way be discovered, which is yet swallowed up. To that end, they desired, that a Committee be appointed to call such persons before them, and to examine the accounts.

Others conceived this would be too tedious a course, in respect of the shortness of the time, and the speediness which was required in settling these assessments, because the former assessments would expire and be run out the 25th of Decem-

* See vol. iii. p. 168, *note* †.

ber next, and free quarter would then infallibly fall upon us. Therefore, although it were true that the other business would be a very good work, especially in the discovery of such as had dealt unfaithfully with the state. For, it is certain, many have cleaved and adhered to the cause and to the public, but it hath been, as the ivy cleaves to the oak, which is to the end to climb up by it, and to suck from it. Yet it was necessary to fall more closely and immediately to the work.

It was every man's sense, to go as low as possibly could consist with our safety; for certainly, this was that which was so much desired and expected by the people from us. This was that which would render our government acceptable and amicable. This alone would sweeten the alteration and change which was intended amongst us. Let us make what laws we pleased for the good and welfare of the people, yet if we did not ease them in their purses, we should never think to oblige them ever to us.

Besides, in truth, this business would not admit of much deliberation. The countries are, generally, exhausted of all the monies. Men are forced to mortgage their lands, and to sell, in some places, their very beds from under them, to pay the taxes; and the cheapness of commodities* is not so much

* See *supra*, p. lx *note* *. See Bishop Fleetwood's *Chronicon Pretiosum*, (1707,) where he states "the price of corn and other commodities for the last 600 years." A new *Ed.* in 1745.

In the former century there was a remarkable fluctuation of prices, as thus related by Bishop Godwyn:

"This yeare (1557) is alike memorable for the extreme dearth, and contemptible cheapnesse of corne. A little before harvest, wheat was sold at foure markes the quarter; within the current of a month it fell to the low rate of five shillings. Wherein I rather admire the ensuing cheapnesse than the dearth, having, myselfe, in the year 1597, paid double the former deare price." *Annales of England*, (1630,) p. 329.

As to other articles of daily consumption, Dr. Birch had in his possession a "parchment roll," containing "Orders to be observed by the Prince's Household," in 1610. It contains the following regulations:

"The prices of flesh, as the prince payeth, and the weight, as they are agreed with the purveyors. An ox should weigh 600lbs. the four quarters;

from the plenty, as from the scarcity of money, which is drained so continually from the country by their monthly taxes, as it never returns again in such plenty. And if this drain should run long, it would, nay, it is to be feared, that it will make the poor tenant and farmer to run too; and ere long, the very landlord himself.

Therefore, to come to the matter, some propounded, as they had formerly done, in regard they had not yet any certain prospect into the state of the revenue, and not knowing the certain number of the standing forces, which were intended to be continued, that therefore, we might make as reasonable an estimate as we could for the present, and proportion the tax but for three months, at 30,000*l.* *per mensem*, as hoping that that might be sufficient to effect the work, and to carry on the charge. Some proposed 40,000*l.* and some 50,000*l.*: but at length it rose unto 60,000*l.* *per mensem*. And, that we might be the better able to give a rationable estimate of this proportion, it was said, that there were several things to be taken care of, and provided for, and to be considered in this debate.*

and commonly 9*l.* 10*s.* or thereabouts. A mutton should weigh 46lb. or 44lb; and the cost, by the stone, 2*s.* 3*d.* the stone being 8lb. Veals go not by weight, but by goodness only; their price is commonly 17*s.* or thereabouts. Lambs at 6*s.* 8*d.* the piece." See "The Life of Henry Prince of Wales," (1760,) pp. 427, 449.

According to a report from a deputation sent to Ireland, by the Corporation of London, in 1615, "the prices of provisions in Ulster then were, for a cow or bullock 15*s.* (about one halfpenny per pound); a sheep from 16*d.* to 2*s.*; a hog, 2*s.*; barley 11*d.* a bushel; oats 4*d.* a bushel; strong beer 16*s.* a barrel; but this was represented as being exceedingly dear at that price." See "A View of the Irish Society," (1822,) p. 33. See, also, on "The proportion between Coin and Commodities, in different periods," Dr. Priestley's "Lectures on History." No. xvi. *Works*, (1826,) xxiv. 121—126.

* "1. There was the navy. We had 100 sail now abroad, but to continue so great a charge might endanger the whole. The charge of every seaman, heretofore, was 3*l.* 15*s.* *per mensem* by the head, and 7½*d.* victual *per diem*, now we give 8½*d.* in victual *per diem*, and 4*l.* 10*s.* *per mensem*. Our customs, which heretofore maintained the naval charge, did not exceed 300,000*l.* *per annum*. They are now worth

These reasons and computations being largely discussed on both sides, it was at length proposed by the court and sol-

400,000*l*. *per annum*, which will maintain 65 ships, at the rate of 4*l*. 10*s*. *per* poll, and reducing the pay to the former allowance and rate, it will maintain 70 ships.

"Besides the customs of England, the customs of Scotland are well near worth [illegible]9,000*l*. *per annum*, and better: 65 ships, with this charge, may be maintained in summer, and 25 always for a winter guard, which may be thought sufficient for our security and service.

"2. There is 200,000*l*. *per annum* for the Protector, and to defray the charge of the government.

"For this, there are delinquents' estates, exchequer revenues, post-office, and other offices, which make up 140,000*l*. *per annum*, in England only. And to make that up full 200,000*l*., it was proposed that Scotland and Ireland might be charged so much in assessments which will be in all but 60,000*l*. in both nations.

"3. There is a charge of the army. The standing forces, soldiers, must be maintained. The number of the present standing forces is 57,400 and odd, considered with the train of artillery, and all necessaries, as if they were to march into the field.

"To proportion any assessment to so great an army, is now almost impossible. The nation cannot bear it. Therefore, we must hope for a reducement. By the Instrument, the standing forces are to be but 20,000 foot and 10,000 horse, according to the pay now established, which is better than ever it was, and better than any pay in Europe. This army of 30,000 will be maintained at 68,000*l* *per mensem*, which will exceed the monthly account 8000*l*., to make up which, the assessment of Scotland may be added, which will be 10,000*l*. *per mensem*.

"Besides all these, there is the Excise, worth at least 400,000*l*. *per annum*, but that is in debt, and it is wisdom always to have it so, but the overplus of it will raise, at least, 30,000*l*. The customs also are something in debt, but not considerably, so as to obstruct any thing upon them.

"Besides, there are King's revenues in Scotland, which were not clear 11 or 12,000*l*. *per annum*, and it is a wonder they could maintain their king at such a rate. The same in Ireland. Delinquents' estates in both. The estates of Bishops, Deans, and Chapters, the Rebels' lands in the four confiscated counties. [See Vol. ii. p. 233, 238, *notes* †.]

"It was confessed to be true, that the charge of the ships and seamen was advanced, in pay, and other things, since the Dutch war. Some had 16, 20, 24, shillings *per* week, and yet they can have more, to go in any merchant ships.

"But to speak of 65 ships to be maintained for 400,000*l*. *per annum* cannot be, unless they be very small ships; but there can be few or none

diery party, that the resolutions of the House be deferred until we might, possibly, receive an account from the Committee which was appointed to attend his Highness, what forces might be thought necessary to be continued, and what abated, and that then we might better ascertain the assessment.

But, the former reasons prevailing, and some, even of that party, ingenuously confessing themselves satisfied; and some, even at Whitehall, declaring that it was their sense that 60,000*l.* would be the highest they did expect. It was thereupon

Resolved, that an assessment of 60,000*l.* a month, for three months, be laid upon England, towards the discharge of the army and navy; and that a Bill be brought in to that purpose, and the Committee for the Army do prepare and bring in the same.*

Only the Scots and Irish moved, that those nations might be involved in the same Bill of charge, with England, and not to be rated by themselves; but that was not yielded unto.†

1st, 2nd, or 3d, rate ships; for if there be, they cannot be maintained under 500,000*l.* *per annum.*

"Besides, there is the charge of the Office of the Ordnance, and a constant and continual built of ships to supply the decays of the old.

"The winter guard now is but 4000 men. In summer they must be 9000.

"The field forces are now 57,000 in the three nations, which will ask 112,000*l.* *per mensem,* which exceeds our assessment charges, as they now are, above 20,000*l.* *per mensem;* so as it was not, by some, conceived possible that, for the present, there could be such a reduction, as that 60,000*l.* *per mensem* could defray all charges; for the charge alone of the navy would come to, at present, 69,502*l.* 10*s.* *per mensem,* which is 903,532*l.* 10*s.* *per annum.*

"On the other side, it was affirmed that 400,000*l.* would maintain 60 ships of as good rate as are now maintained.

"That there were in the Channel 62 ships, which, at 4*l.* 10*s.* per head for the month, comes but to 31,000*l.* *per mensem,* which will fall under the rate of 400,000*l.* *per annum.*" *Goddard MS.*

* Corrected from the Journals.

† "Ordered, that the House do, on Thursday next, take into consideration the assessment for Scotland and Ireland." These are all the notices in the *Journals* of this discussion.

in regard their nations were not at present in such a condition of peace and improvement as ours was, and therefore could not be laid at a full proportion. But they moved it upon another account; for they did fear that 60,000*l.* would be so low a charge, as would nothing near satisfy, and therefore they were jealous that all the rest that fell short, would be laid upon them.

Wednesday 22. The Bill for ejecting scandalous ministers was again read the second time, and committed back to the same Committee to be amended, upon some exceptions.

In the afternoon, the House sat again.* It was

Resolved, that it be referred to a Committee to consider what may be fit to be done, that the accompts of the public monies of the nation received, both for the time past and present, may be discovered and perfected, and the accompts brought to an account; and how the same may be put into such a way for the future, as may be for the advantage of the Commonwealth, and report their opinion therein to the House.

Resolved, that it be referred to the same Committee, to consider of all debentures and bills of public faith, though allowed upon the sales of any of the Commonwealth revenues, and to examine whether or no they were procured by fraud, or whether they be real and not forged, as many are informed to be, and to consider which way, and how such frauds and counterfeits may best be discovered, and what they think fit

There were "this day read the humble petition of Mary, Countess of Stirling, and John Blunt, her husband," and others, and "of Thomas Levingston and Anne his wife," when it was "resolved that both the said petitions be committed," and also

"Ordered that it be referred to the Committee to whom it was referred to bring in a Bill to take away the Court of Wards, to bring in a Bill for the taking away of purveyance." *Journals.* See *infra,* p. 81; vol. ii. p. 437, *note.*

* "Resolved, that no private business, be taken into consideration in this House for a month.

"The humble representation of the Committee for taking and receiving the Accompts of the Commonwealth; with matter-of-fact stated therein, annexed to the said representation, were both read." *Journals.*

to be done therein, for the reparation of the Commonwealth, and to report their opinion therein to the House.*

After which, they fell upon the sixth article of the Instrument. Resolved, upon the question,† that the laws of this Commonwealth shall not be altered, suspended, abrogated, or repealed, nor any new law made, nor any tax, charge, or imposition laid upon the people, but by common consent in Parliament. Provided, that this vote shall not extend to invalidate or prejudice any Ordinances or Provisions made by the Lord Protector and his Council, before the Parliament, for the maintaining of the forces of this Commonwealth, by sea and land, in England, Scotland and Ireland, and for the necessary charges of the government, until order shall be taken in Parliament concerning the same.‡

To which proviso, some exceptions were taken, as being unwilling to own them Ordinances, so far as to give them any countenance. And then, if we confirm them, until the Parliament take farther order, and perhaps we shall not sit to take any further order, then we have given it our stamp and our impression, which is more than did become us to do.§

Thursday 23. The questions upon the sixth article were not voted until this day; and then, instead of the proviso before-mentioned, there was a vote passed by itself to this purpose, viz:

That such Ordinances heretofore made by the Lord Protector and his Council, before this Parliament, for the raising, bringing in, and disposing of monies for the maintaining the forces of this Commonwealth, by sea and land, in England,

* Corrected from the *Journals*.

† Rather "the question being propounded," as in the *Journals*.

‡ Corrected from the *Journals*.

§ "The question being put that candles be brought in, the House was divided. The Yeas went forth. *Yeas*, 47, Colonel Harvey and Colonel Clark, Tellers. *Noes*, 85, Mr. Guis and Colonel John Birch, Tellers.

"Resolved, that this debate be adjourned till to-morrow morning." *Journals*.

Scotland, and Ireland, and for the necessary charges of the government, shall remain and continue to the end of this Parliament and no longer, unless the Parliament take further order to the contrary; or unless the said Ordinances shall expire before that time.* And then they voted the sixth article in words as it is in the article.†

After this, they would have proceeded further, upon the debate of the seventh article, in course, concerning the summoning of Parliaments. But some not agreeing whether they shall be biennial or triennial, and the report concerning the elections and qualifications not being made, this debate was therefore put off until another time.‡

A report was read from the Committee, which was appointed§ to advise with the Protector, concerning the lessening and reducing the forces, both by land and sea, and to receive his opinion, touching those garrisons which the Parliament thought fit to be demolished, and touching the forces in Scotland and Ireland, and the garrison there.

His Highness's answer was, that there had been a Committee before to wait upon him, to the same purpose. That, as to the garrisons which the Committee of Parliament thought fit to be demolished, to some of them he gave no answer at all. To the rest he answered thus:—

1. As to Warwick Castle, it did not signify much, nor was

* Corrected from the *Journals*.

† "That the laws shall not be altered, suspended, abrogated, or repealed, nor any new law made, nor any tax, charge, or imposition, laid upon the people, but by common consent in Parliament, save only as is expressed in the thirtieth article." *Ordinances* (1654), p. 23; *Journals; Parl. Hist.* xx. 249.

‡ "Resolved that Mr. Hoskins do report to the House, to-morrow morning, the Report made to the Committee of the whole House, touching the government, by a sub-committee, to whom the several articles, touching the manner of calling of Parliaments, were referred." *Journals.*

§ See *supra*, p. lxxvii. "Colonel Birch reports from the Committee for retrenching the forces, that the Committee have attended his Highness the Lord Protector, according to the order of the House; and his Highness's answer unto the Committee, therein." *Journals.*

it very considerable, and therefore he conceived, it might be of no great use to be continued.

2. For Chester, it was a place of strength, and had cost a great deal of blood.* And, although the Committee of Parliament had resolved to make it untenable, yet some members of Parliament had been with him, and had desired to be heard in it. They had also proposed that Liverpool might rather be dismantled, and the forces translated from thence to Chester, and, therefore, that might be thought fit for further consideration.

3. For Shrewsbury, which indeed was not positively resolved upon by the Committee, he was of opinion that it was a place of strength: that if any enemy should get into it, and possess it, all the forces of England and Scotland could not be able to force them out: that it might be kept with small charge, and therefore this also was fit for further consideration.

4. For Bristol Castle, it was a place of no great strength, yet it was convenient for a citadel, and might be made use of to that purpose. For Bristol Fort, it was very regular, and might be kept with a small number. That it was the practice of all nations, and he mentioned that of France, that in all populous cities, there used to be citadels, and therefore, he thought this also might deserve farther consideration.

5. For Chepstow, because it was his own house, he would not have a garrison there at the Commonwealth's charge.

6. As to Hereford, it lay near unto, if not in the very centre of, North and South Wales, those mountainous countries, which he feared had not forgot their mountainous qualities, and for religion and other things not so well qualified as would be desired. The countries and people there, were not so well affected as he could wish, and therefore this also was fit for further consideration.

These are all the garrisons he spake unto, the rest voted by the Committee he never so much as mentioned.

As to the field forces, he said he was willing to disband so

* In 1645. See Rushworth's *Hist. Col.* (1708) v. 554, 562, 563.

many of them as could be disbanded with the public safety; and he conceived it was both his and our meaning, to prefer safety before any manner of charge.

As to Ireland, he said, he had received a packet lately from the Commander-in-Chief there, of the affairs in relation to that nation; but he had not yet perused it. When he had, the Parliament should receive an account of it.

As to Scotland, he said he did not know of any one man, meaning company, of horse or foot, that would be disbanded there. He had received intelligence from the Commander-in-Chief there, and from the officers in the several parts of it. In general, the country was wholly very much disaffected to the present government. The Presbyterian and Cavalier interest were so complicated, as he did not see how any forces there could be lessened with any safety, until these two interests could be satisfied, and which way to do that he did not find, they being constantly blown up by the enemies beyond the seas, and the distempers there, were so great, as the Commanders there did call for more forces, so far it was from abating any; and some gentlemen of that nation, who sate amongst us, knew these things to be true, and could present them to us.

As to the forces in England, the numbers were but few, the condition of the people such, as the major part a great deal are persons disaffected and engaged against us.*

Notwithstanding all this, he would not say there could be no lessening, and therefore he would be willing to entertain a conference to that purpose, and to do therein whatsoever might stand with the public interest and safety.†

Friday 24. This day the House took into consideration those articles of the Government which relate to the calling of future Parliaments, and resolved upon the question:—

1. That a Parliament be summoned, to meet and sit at Westminster, the third Monday of October, 1656.

* See, on "the general spirit and temper of the nation," *infra*, p. 281.

† "Resolved, that the said Committee be continued, and that they be further empowered, from time to time, as occasion shall be offered, to confer with his Highness the Lord Protector." *Journals*.

2. That a Parliament shall be summoned to meet and sit at Westminster, upon the third Monday in October, 1659; and so likewise on the third Monday of October in every third year successively.

3. That neither this present Parliament, nor the Parliament which shall be summoned to meet on the third Monday of October, 1656, nor the Parliament to be summoned to meet on the third Monday of October, 1659, nor any succeeding Triennial Parliament, shall, during the time of six months, to be accounted from the day of their first meeting, be adjourned, prorogued, or dissolved, without their own consent.

4. That neither this present Parliament, nor the Parliament which shall be summoned to meet on the third Monday of October, 1656, nor the Parliament that shall be summoned to meet on the third Monday of October, 1659, nor any successive Triennial Parliament, shall have power to continue to sit above six months, without the Lord Protector's consent, to be by Act of Parliament; in which Act there shall be a limited time for their sitting, not exceeding three months.

5. That the Lord Protector, with the advice of the major part of the Council, shall, at any other time than is before expressed, when the necessity of the State shall require it, summon a Parliament, in a manner hereby expressed, which shall not be adjourned, prorogued, or dissolved, without their own consent, during the first three months of their sitting; nor shall have power to continue to sit beyond that time without the consent of the Lord Protector, to be by Act of Parliament; in which Act there shall be a limited time for their sitting, not exceeding one month; provided, that such Parliament shall end, and be determined, before the summoning such Parliaments as are before hereby appointed.

6. That the summons to Parliament shall be by writ, under the Great Seal of England, directed to the sheriffs and other officers, according to laws of the several and respective counties and places.*

* Corrected from the *Journals.*

7. They voted the form of the writ of summons, in which was some variation from the old form.*

8.† That, in case the Lord Protector shall not, before the 1st day of July, 1656, give warrant for issuing writs of summons, for a Parliament to meet the third Monday in October, 1656; and before the 1st day of July, 1659, give warrant for issuing writs of summons, for a Parliament to meet on the third Monday in October, 1659; and before the 1st day of July, in every third year, after that time, give warrant for issuing writs of summons, for a Parliament to meet on the third Monday in October, in every third year successively.

That, then, the Chancellor, Keeper, or Commissioners of the Great Seal, for the time being, shall without any warrant or direction, within seven days after the respective times aforesaid, seal, issue, and send abroad, writs of summons, to the several and respective Sheriffs of England, Scotland, and Ireland, for summoning the Parliament, to meet at Westminster, the third Monday in October, 1656; and for summoning one other Parliament, to meet at Westminster, the third Monday in October, 1659; and for other Parliaments to meet at Westminster, on the third Monday in October in every third year, successively."‡

So much was voted. But then, we came to the last clause of the article, *viz.* wherein (that is, in which indenture) shall be contained, that the persons elected shall not have power to alter the Government, as it is hereby settled in one single person and a Parliament.

To some part of this clause exception was taken. They would have had this alteration, "that the persons elected shall not have power to alter the government from a single person and a Parliament;" the other exception, (as it is now settled, in a single person and a Parliament,) being too comprehensive, and taking in the whole system of the Government,

* See *Journals; Parl. Hist.* xx. 382.

† "In the afternoon." *Journals.*

‡ Corrected from the *Journals.*

implying that it should not be in the power of future Parliaments to alter any part of it. Which had been otherwise declared by this Parliament, and seemed still to be the general sense of us all.

Besides, "is settled," cannot be, the thing being yet but in *fieri*, and the alterations do include the sense of our subscription,* as fully in that single point as might be. Herein, the House being divided† and growing late, they arose without doing any thing.‡

Saturday 25. After the suspending the Act or Ordinance of the Lord Protector, concerning the Chancery,§ the former debate concerning the alteration of the last clause in the twelfth article of the Government, was again considered.

Some moved for a postponing of this question, until the rest of the Government might be finished. Some moved, wholly, for the total laying it aside.

1. As needless, because the thing was taken to be a fundamental constitution, and naturalized with us.

2. Because, if it were put as it is in the article, it would seem to take away Parliamentary freedom, and not leave future Parliaments as free as we have been.

Yet, in the end, upon the reasons formerly given, and the rather, because the very words in the indenture by which we are returned, are agreeable to the alteration propounded, it was voted thus:

That, at the day and place of elections, the Sheriff of each county, and the mayors, sheriffs, bailiffs, and other head officer and officers, within their cities, town, boroughs, and

* See *supra*, p. xxxv.

† On "the question that candles be now brought in. The *Yeas* went forth. *Yeas*, 50. Mr. Bulkeley and Colonel Birch, Tellers. *Noes*, 64. Colonel Norton and Colonel Jephson, Tellers." *Journals*.

‡ "Resolved, that the debate upon this clause in the report be adjourned till to-morrow morning." *Journals*.

§ See *supra*, p. l. *note* ||; *infra*, p. 273, *note* †. Resolved that the execution of the Ordinance for regulating and limiting the jurisdiction of the Court of Chancery be suspended until Dec. 25, next; and that Mr. Foxwist do then make his report of the Act for limiting and regulating the jurisdiction of the said Court." *Journals*.

places respectively, shall take view of the said elections, and shall make return into the Chancery, within twenty days after the said elections, of the persons elected by the greater number of electors, under the hands and seals of twelve or more of the said electors, on the behalf of himself of the one part, and on the behalf of the electors on the other part; wherein shall be contained, that the persons elected shall not have power to alter the Government from one single person and a Parliament.*

After this, a long debate was had, whether or no the Declaration upon the subscriptions should not be altered, according to the preceding vote. But, that Declaration being in effect the same, upon consideration had of it, it was laid aside.

Upon reading the Report upon the thirteenth article, it was voted thus:

That the Sheriff, who shall wittingly or willingly make any false return, or wittingly or willingly neglect his duty in execution of the premises, shall incur the penalty of 200*l.* of lawful English money. And that every Mayor, Sheriff, Bailiff, or other head-officer, of any city, town, borough, or place aforesaid, who shall wittingly or willingly make any false return, or wittingly or willingly neglect his duty, in execution of the premises, shall incur the penalty of 200*l.* of lawful English money; the one moiety of all and every the penalties aforesaid, to go to the Lord Protector, and the other moiety to such party grieved, as shall sue for the same, in any of the Courts of Record at Westminster. Which suit shall not be commenced until the Parliament hath adjudged the same to be such offence, as aforesaid.†

Monday 27. The House entered upon the consideration of such qualifications as should be requisite in persons elected, and in the electors, including the 14th, 15th, 16th, 17th, and 18th articles of the Government.

Resolved, that the persons who shall be elected to serve in Parliament, shall be such, and none other than such, as are

* Corrected from the *Journals.* † *Ibid*

persons of known integrity, fearing God, and of good conversation, and being of the age of twenty-one years; and not such as are disabled by the Act of the 17th of King Charles,* entituled, "An Act for disenabling all persons in holy orders to exercise any temporal jurisdiction or authority; nor such as are public ministers, or public preachers of the Gospel; nor such as are guilty of any of the offences mentioned in an Act of Parliament, bearing date August 9, 1650, entituled, "An Act against several Atheistical, blasphemous, and execrable opinions, derogatory to the honour of God, and destructive of human society†;" nor common scoffer, nor reviler of religion; or of any person or persons for professing thereof: no person that hath married, or shall marry a wife of the Popish religion; or hath trained, or shall train up his child or children, or any other child or children under his tuition or government, in the Popish religion; or that shall permit or suffer such child or children to be trained up in the said religion; or that hath given, or shall give his consent, that his son or daughter shall marry any of that religion: no person that shall deny the Scriptures to be the word of God, or the sacraments, prayer, magistracy, and ministry, to be the ordinances of God; no common profaner of the Lord's day, nor profane swearer or curser; no drunkard, or haunter of taverns, ale-houses, or brothel-houses; none that shall hereafter drink healths,‡ or be guilty of adultery, fornication, or extortion, perjury, forgery, or bribery.

* See vol. iii. p. 85, *note*. † See *infra*, p. 392, *note*.

‡ "Ordered, that a Bill be brought in against the drinking of healths; for the putting like degrees of penalties on drunkards, as is by the Act imposed on swearers: and for enabling the Justices of Peace, to levy the penalties, or execute the punishments, in that behalf, in a more speedy way than by former acts is provided; and supply of the defects in those laws." *Journals*.

"The drinking of healths" seems now to have been chiefly, if not entirely, confined to convivial meetings of the Cavaliers; and employed to express their disaffection to the powers in possession, and their designs to promote that object of their longing desires, "the blessed restitution." See vol. iii. p. 184, *note* * *ad fin*.

Waller, (too accomplished a flatterer to continue, long, any thing but a Royalist,) in his apology "for drinking of healths," thus concludes:

For the incapacities of the electors, it was

Resolved,* that all and every person and persons, who do or shall profess the Popish religion in Ireland, or who have advised, assisted, or abetted, in the rebellion of Ireland, before September 1, 1643, shall, during their lives, be disabled, and be uncapable to be elected, or to give any vote in the election of any member to serve in any Parliament. And likewise, that all and every person, who have advised, voluntarily assisted or abetted, in the rebellion of Ireland, since September 1, 1643, or have at any time advised, voluntarily assisted or abetted the war in England or Scotland against the Parliament, shall, during their lives, be disabled, and be uncapable to be elected, or to give any vote in the election of any member to serve in any Parliament; provided that this extend not to disable or make uncapable such persons, constantly professing the Protestant religion, who, before December 25, 1649, did submit, and have ever since continued faithful to the Parliament, and given signal testimony of their good affection thereunto.†

That all votes and elections given or made contrary, or not according, to these qualifications, shall be null and void; but the penalty or forfeiture was wholly omitted.‡

"Wine fills the veins, and healths are understood
To give our friends a title to our blood:
Who, naming me, doth warm his courage so,
Shews for my sake what his bold hand would do."

Works, (1744,) p. 64.

* "27 *Novemb. post merid.* 1654. Ordered, that Mr. Recorder, [Serjeant Steele,] do also bring in a Bill for the supply of the defects in the former Acts touching swearing, and unlawful gaming and gaming-houses.

"Mr. Recorder reports from the Committee, who were ordered to withdraw this morning, their opinion, touching the clause referred to be penned by them. Which was read, and upon the question agreed as followeth:) that all and every person," &c. *Journals.*

† Corrected from the *Journals.*

‡ Before the next resolution reported by Mr. Goddard, there appears to have been three divisions.

"The question being put, that any person not within the aforesaid exceptions having an estate of freehold, of the yearly value of forty shil-

That all and every person and persons, not within the aforesaid exceptions, being resident for the space of three months, or more, before the time of election of members to Parliament, in such county where election is to be made, having an estate in freehold, to the yearly value of forty shillings, within any county, riding, limit, or place; or having an estate, real or personal, to the full and clear value of 200*l.* to be declared upon oath, by such person or persons, if required; and which said oath, the sheriffs or their deputies are hereby impowered to give; shall be capable to give his or her vote, for the election of members for such county, riding, limit, or place, where such land or estate doth lie.

Provided, this extend not to alter any ancient customs, charters, or privileges, of any cities, boroughs, towns, or corporations, who have hereby right to elect members to Parliament, but the same continue as formerly.*

But here was a vote that such 200*l.* men, as had votes in boroughs, and had freehold lands to the value of 40*s.* in the said boroughs only, and not within the body of the county, should not, either for their 200*l.* or for such freehold only, have voices for choosing of knights in the county, unless they

lings, within any county, riding, limit, or place, shall have liberty to give his vote for the election of a knight, or knights to serve in Parliament, for the same county, riding, limit, or place, where the said land doth lie.

"The House was divided. The *Yeas* went forth. *Yeas*, 96. Colonel Birch and Sir Ralph Hare, Tellers. *Noes*, 53. Lord Richard Cromwell and Sir Anthony Ashley Cooper, Tellers. So it was resolved.

"The question being put that candles be brought in, the House was divided. The *Yeas* went forth. *Yeas*, 85. Sir Ralph Hare and Mr. Reid, Tellers. *Noes*, 55. Colonel Rous and Alderman Avery, Tellers. So it passed with the affirmative.

"The question being put, 'that every person, having an estate, real or personal, to the value of 200*l.* shall have his vote in election of members to sit in Parliament for counties,'

"The House was divided. The *Yeas* went forth. *Yeas*, 65. Commissary-general Whalley and Colonel Rous, Tellers. *Noes*, 44. Sir Ralph Hare and Sir Robert Pye, Tellers.

* Corrected from the *Journals*.

had freehold also in the county to the value of 40s., and out of the precincts of the said borough.*

Tuesday 28, *Wednesday* 29. Were spent in the debate of the duties respectively, of the Chancellor, Keeper, and Commissioners of the Seal, and likewise of the Sheriffs, Mayors, Bailiffs, officers, and clerks, that shall fail, or be found negligent in sending abroad writs, precepts, or warrants, for summoning or calling of Parliaments, and their several and respective duties therein contained, in the nineteenth, twentieth, and twenty-first articles. Only, upon the twenty-first article, there was a long debate, where the judgment ought to be, of the qualifications required in the persons to be elected.

The article proposed it in the Council; but that was held dangerous to place a judicatory out of the House, of such as were to be members of the Parliament. For so, the Parliament might be pinned at the girdle of other men. Others thought, that the best way might be, to do as they do in Scotland. That is, that after all the members are returned, the first work be to appoint a Committee to try those members, before they entered upon any other work.

And, as I heard, it was settled, afterwards, with the Council.†

Thursday 30. The Bill for assessment was read, and the old proportions upon the counties ordered to stand, in regard

* There had been a division on "the question, that these words, 'unless he have an estate of freehold in the county, of the clear yearly value of forty shillings within the same county,' be part of the question.

"*Yeas* 53. Sir Ralph Hare and Alderman Gibbs, Tellers. *Noes*, 49. Colonel Clark and Mr. Bedford, Tellers." *Journals*.

† "Nov. 30. Resolved, that it be referred to the Council, to judge of the persons returned for members of Parliament, as touching any charge of delinquency mentioned in the qualifications; and to examine the same, and certify the same to the Parliament. And that such members shall not sit, until the House have adjudged the same.

"Resolved, that it be likewise referred to the Council, as to Papists returned to serve in Parliament." *Journals*.

the time was so short as could not admit of any long debate upon the alterations of the proportions.*

Friday, December 1. The Bill for assessments was continued† and finished, and ordered to be reported upon Monday next.

* " Thursday, 30th *Novemb. post merid.*

" Resolved, that the persons chosen and assembled, in manner aforesaid, or any sixty of them, shall be, and be deemed, the Parliament of England, Scotland, and Ireland.

" Resolved, that the manner of electing the Protector, in the vacancy of a Protector, sitting the Parliament, shall be such as the Parliament shall think fit.

" Resolved, that the Protector dying in the intervals of Parliament, the Council shall immediately assemble in some convenient place, and, having given notice to all their number, or to as many of them as conveniently they may, of the cause and time of their assembling, shall, being thirteen at least present, proceed to the election; and eleven of them, or more, shall agree who shall be the succeeding Protector. And before they depart, shall declare such person, so agreed upon, to succeed in the Government: the manner of election in all other things to be as the Council shall think fit.

" Resolved, that the person so to be elected Protector, shall be such, and no other than such, as shall, by his good conversation, among the people of these nations, manifest himself to be a man of ability, truth, and courage, fearing God and hating covetousness.

" Provided, that he shall not be under the age of twenty-five years, no alien, no Papist, nor any whose wife is a Papist, nor any of the children of the late King Charles, nor such as shall have, or may pretend to have, title of inheritance unto the Supreme Government of these nations of England, Scotland, and Ireland, or any of them, or any other title, than by election, as aforesaid.

" The House resumed the debate upon the first report from the Committee of the whole House: and the clause was now read in these words, ' that persons, who shall be of the Council, shall be such as shall be nominated by the said Lord Protector, and approved by the Parliament.'

" The question being put, that the House do proceed in the debate of this question, at this time,

" The House was divided. The *Yeas* went forth. *Yeas*, 51. Sir Charles Wolseley and Mr. Whitgrave, Tellers. *Noes*, 65. Mr. Bond and Sir Anthony Ashley Cooper, Tellers. So it passed in the negative." *Journals.*

† In " a Committee of the whole House. Mr. Turner was called to the chair." *Journals.* On this versatile lawyer, become " Sir Edward Turner," &c., see vol. iv. p. 431, *note* ‡.

Upon this day's debate, it was moved that all ministers who had livings of *60l.* or under, shall be exempted from paying any taxes; or, at least, that they should be rated but for so much personal estate. But to that several things were objected.

1. That thereby they would exempt all the malignant ministers, who now are reduced, in general, to those small livings; and their friends, who had got into the best livings, would partake nothing of this indulgence.

2. That this would beget an enmity towards the clergy, that they should be so much eased and favoured above other persons.

3. It may prove dangerous in the precedent; in regard, the clergy, of old, pretended a right and privilege to be exempted from secular charges, and this may give them an opportunity and temptation to revive that old claim.

4. It is held dangerous, in any state, and of evil consequence, to exempt any orders or degrees of men from the public charge. For then, that order so exempted, being no way sensible of the charge, will not care how much be laid; nor regard those ways and means which may conduce to the ease of the rest of the people.

5. The parsons, who, heretofore, have had, and in all ages will have, a great influence upon the affections and suffrages of the people, when they find themselves exempt from charge, will not care how much they preach it up, and lay heavy burdens upon their brethren, which they themselves will not be able to touch with their little fingers.

Lastly. Admit they should be exempted or eased, who must bear their part of the rest of the charge? For every county, and every hundred in the county, and every town in that hundred has its certain proportions, and so has every estate of freehold within that town.

Now, to ease the parson, either the soldier must abate it, or the Commonwealth lose it, or else the rest of the town must bear it. And then, perhaps, a poor man of *5l. per annum*, who pays his tithes duly to his parson, must not only do so, but he must also help to pay the taxes of the parson,

who hath a living ten times as good as his; while he, poor man, must starve, almost, for want of bread. Which will draw great odium upon the parson; and if the thing were feasible, yet now it would be very unseasonable, in regard of the present interruption it would put upon the service, the rates being now known and certain. But, upon such an alteration, it would make a great confusion, and breed delay in the collection.*

Saturday 2.†—Was spent in the debate upon the nomination of the Council; whether the Protector should nominate, and the Parliament approve, or the Parliament nominate, and the Protector approve.

It was moved, that before this came to the question, it be resolved what qualifications should be required, and what the salary. The debate being very earnest, it was desired that there might be no salary, nor any Parliament-man chosen, and then the heats, who should nominate, would not be so great.

* From the following passage, in a letter written by "Sir Edward Hyde to the Marquis of Ormond, from "Cologne, 1st Dec. 1654," and printed from the "original," it appears that the royalists now indulged the fond, though yet vain expectation of a successful insurrection against the Protectoral Government.

"All things go as well in England as you can wish, and we have reason to believe that the army will begin the business for us, and even do the work for us, and we expect speedily to know the day." See "Clarendon State Papers," (1786,) iii. 259.

† *Post meridiem*, the morning had been otherwise occupied.

"Colonel Morley acquaints the House, that Sir Thomas Rivers being returned to serve in this Parliament, the Clerk of the Commonwealth doth refuse to certify him to the clerk of this House, until he have been approved by the Council, he being chosen upon a writ that issued forth, since the sitting of Parliament, for a new election.

"Resolved, that such members as are, or shall be returned upon writs for new elections, issuing by warrant from the Parliament, under the hand of Mr. Speaker, shall be returned and admitted into the House, without any other approbation than of the Parliament. And that the Clerk of the Commonwealth do and shall certify such member, accordingly, to the clerk of the Parliament.

"The form of an oath to be administered to the Council of the Lord Protector was read and resolved." *Journals.*

It was said to be the Parliament's right to nominate. They were to be the Council of the Commonwealth and the Parliament's Trustees. Therefore, it was fit that the Parliament should choose them, especially being to be trusted with greater matters than ever any former Council were; as, namely, the election of the Protector, the government of the militia and of the whole Commonwealth, in the intervals of Parliament.

But, to that, on the other side, it was said, that the inconveniences would be greater, if the Parliament should nominate.

1. They were a great body, and so not so fit to nominate; and, if fit, yet perhaps not so able; and, if fit and able, yet perhaps they could not do it in all respects so conveniently, in regard that it was necessary, there should be some personal knowledge, opinion, and affection, between the Protector and his Council, and certainly the Parliament cannot choose so well as the Protector himself.

2. To put the Protector upon the point of approving or refusing, there will be this unhappiness in it, either the Protector must accept and approve of all that are nominated unto him, and that may prove very inconvenient; or if he shall make use of his judgment to refuse any, look, how many he doth refuse, so many he must necessarily disoblige in the highest point that can be. That will but make him so many enemies, and create discontents and factions against him, upon personal respects. Whereas, on the contrary, if the Protector nominates, and the Parliament shall refuse or disapprove, there is no danger thereby to the Parliament, and the person so refused will be sure to be blasted for ever.

It was objected, that he that hath the nomination hath the compass of three nations to choose in, but he that approves is confined to the number nominated. Besides, he that hath the nomination, has the first step to preferment in his power, and hath a bar and a negative upon any other, for he that approves only, cannot properly prefer any.

On the other side, it was said, that if the Parliament hath the nomination, it must be by a balloting box, and that was

found to have much deceit, and to be capable of practice, and was called indeed no better than a juggler's box; or it must be openly in the House. That hath been found to have many inconveniences; every man being led by particular interest and affection, and, in fine, so many difficulties, as make that way very dilatory and tedious.

It was also said, that if Parliament should nominate, it might be possible that it bring in the old line again, and, at best, if they should nominate, it could not be expected that if the Council should prove bad or insufficient, that ever they would punish them, or call them to account, in regard they were persons preferred by themselves.

It was objected, that most of the arguments might be pressed with much more weight and advantage against the Protector's nomination and the Parliament's approving. But it seems strange, that the Council should nominate the Protector, and the Protector nominate the Council. By such a reciprocation we may judge of the consequences. Besides, the Protector himself, in his speech in the Painted Chamber, calls it your Council, meaning the Parliament's Council, and that he would have to be a check upon him. Now it is strange for a man to choose his own check. The treaties of Uxbridge demanded the same thing of the late King.*

It was answered, that it might be our Council, though not of our nomination.

It was objected, that as it was to be our Council, so all the business was our business, and if we should only approve, how safe could it be for any single person to take personal exceptions, against any one that should be nominated by the Protector? Who dares oppose him openly, whom the Protector shall have so good opinion of, and who shall come to have so great power and opportunity to avenge himself of any opposer?

Notwithstanding all these reasons, it was put to the ques-

* This does not appear in *Whitlock*, nor in Lord Clarendon's longer narrative of the Treaty in 1644. See his *History* (1712), ii. 577-600.

tion, and carried by a divided House,* that the persons who shall be of the Council, shall be such as shall be nominated by the Lord Protector, and approved by the Parliament.†

Monday 4. The Bill for the assessment‡ was read the second time, and all the Commissioners names agreed, and ordered to be engrossed. But the proportions were to stand as formerly for these three months, in regard that the speedy necessity of this assessment could not permit time to debate that.

Tuesday 5. The assessments for Scotland and Ireland were taken into consideration. After a long debate, it was, upon the question,

Resolved, that Scotland shall be rated for this next three months, at the rate of 8000*l.* *per mensem*, and the same proportion of 8000*l.* for the next three months, was set upon Ireland.

Much was said by the members of both nations, in order to an abatement of the assessment. The misery and poverty of the nation were at large represented. Therefore, although heretofore Scotland was rated at 10,000*l.* *per mensem*, yet it was thought fit for these three months, only to lay them at the former rate of 8000*l.* and afterwards to raise them to a due proportion, as the Parliament should see cause.§

Wednesday 6. The number and continuance of the standing forces‖ were debated, and voted to be such as shall be

* "*Yeas* 100, Lord Broghill and Sir Charles Wolseley, Tellers. *Noes*, 68, Mr. Bulkeley and Colonel Morley, Tellers." *Journals.*

† Corrected from the *Journals.*

‡ "For the three months, at the rate of 60,000*l.* by the month." *Journals.*

§ "Resolved, that the number of the persons who shall be of the Council, shall not exceed one and twenty. That eleven of them shall be a Council, and not under.

"That no person shall continue to be of the Council longer than forty days after the meeting of each succeeding Parliament, without a new approbation by the Parliament." *Journals.*

‖ This provision for "standing forces", had been immediately preceded by a resolution, which might have induced the belief that English-

agreed upon by the Lord Protector and the Parliament. Upon some jealousies, lest this vote should seem in the mean time to imply a disbanding of all the forces, until such agreement should be obtained, it was moved, and pressed with much earnestness, that a proviso be added to that vote to this purpose; "that this shall not extend to alter the constitution of the army and forces, as it now stands."

This was conceived of too great a latitude, in regard the present constitution was 57,000 and odd, and in case the Parliament and Protector should not agree, this vote might imply a consent of the Parliament, to the holding up of such a force. It was therefore laid aside.

Then it was pressed again, that the proviso might be thus: that it shall not extend to the reducing of the land-forces to a less number than to 30,000.* But, because that might imply a consent to the establishment of such a number for ever, especially, in case the Protector and Parliament should not agree, this, therefore, was also laid aside, and any thing else of that nature, out of an expectation that, before the Bill should pass, the Protector and Parliament would certainly agree in stating of the number, and in all other things, in relation to the standing forces.

But this gave great offence to the Court-party, some of which were heard to say, that they cared not ever to come into the Parliament House again.

Something was attempted again, to the same purpose; but in vain. Whereupon they proceeded on with the other

men, determined not to "learn war any more," had "beat their swords into ploughshares, and their spears into pruning hooks." The House "Resolved, that the Lord Broghill, Mr. Rous, Mr. Bulkeley, and Sir William Masham," (the deep divines, probably, of the Parliament,) "or two of them, be daily present with the divines, whose advice hath been desired in the business touching religion; and to desire them to attend that business, and perfect the same for a speedy consideration of this House." *Journals.*

* "In the three nations; viz. 20,000 foot, and 10,000 horse and dragoons, without the consent of the present Lord Protector and the Parliament, sitting the Parliament; and in the intervals of Parliament, without the consent of the Lord Protector and the Council." *Journals.*

articles of Government, and went back again to the second article, and

Resolved, that the exercise of the Chief Magistracy of this Commonwealth, and the people thereof, is, and shall be in the Lord Protector, assisted with a Council; the exercise of which power shall be according to the laws, and according to such limitations as are, or shall be, agreed upon in Parliament.*

Then they proceeded to the third article, and

Resolved, that all writs, process, commissions, patents, grants, and other things, which heretofore did or might, lawfully, have passed or issued in the name or style of the Keepers of the Liberties of England, by authority of Parliament, shall pass and issue, in the name of the Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging.

Resolved, that such titles of honour, as shall be hereafter conferred in this Commonwealth, shall be derived from the Lord Protector, and that no title of honour hereafter to be conferred by the said Lord Protector, shall be hereditary, without consent of Parliament.

Resolved, that it shall not be in the power of the said Lord Protector, to pardon any person lawfully convicted of murder.†

Then they proceeded to the fourth article, and voted that the Lord Protector, by the advice and consent of the major

* Corrected from the *Journals*.

† *Ibid.*

"The question being put, that it shall not be in the power of the said Lord Protector, to pardon any person lawfully convicted of treason,

"The House was divided. The *Yeas* went forth. *Yeas*, 83. Sir John Hobart and Sir Richard Onslow, Tellers. *Noes*, 81. Sir Ralph Hare and Colonel Jones, Tellers.

Eodem die post meridiem. "Resolved that the Lord Protector, with the consent of the Council, shall have power to pardon, except in cases of murder and treason.

"Resolved, that the Committee for the consideration of the Ordinances made by the Lord Protector and the Council, do take into consideration the Ordinance touching treasons, and the several former Acts touching the same, and prepare a Bill." *Journals*.

part of his Council, shall have power to direct in all things, concerning the keeping and holding a good correspondency with foreign kings, princes, and states.

And that he shall have the benefit of all forfeitures, and confiscations, not already granted, or otherwise lawfully vested in any other person or persons, bodies politic or corporate, according to the trust reposed in him by law, and as shall be agreed upon by Parliament.*

Then they debated upon the fifth article, and voted the power of making war to be only in the Lord Protector and the Parliament; and that, sitting the Parliament, no peace shall be concluded but by consent of Parliament; and, in the intervals of Parliament, the power of making peace shall be in the Lord Protector and the Council, with such reservations and limitations as the Parliament shall approve.†

After this, we proceeded to the tenth article, and voted that the persons to be chosen within England and Wales, and the town of Berwick-upon-Tweed, to sit and serve in Parliament, shall be, and not exceed the number of four hundred.

Although it was strongly moved in behalf of the city of London, and the Universities, that some more members be added to them, it was voted and settled according to the Instrument. Yet it was urged that the City of London paid the sixteenth part of the charge of the nation,‡ and that the Universities were but equal in number with the towns.

Nevertheless, it was conceived that London's interest was rather too big already, than in proportion it ought to be. For the Universities, it was not fit to countenance any factions between them and their towns; but to let them go hand in hand, and in an equal balance. Besides, both the cities and the Universities had many great friends in Parliament, always, besides those who did particularly serve for them.

It was voted, also, that the number for Scotland should be, and not exceed thirty, and the like number for Ireland.

Then they proceeded to the distribution of the members, to the several counties and places, and voted them, as they came

* Corrected from the *Journals*. † *Ibid.*

‡ See Vol. iii. p. 149, *ad fin.*

from the report. Which, for the most part, did agree with the Instrument,* saving as to Queenborough.

Some gentlemen of Kent, being earnest to have that membership conferred, some to the county, some to Maidstone, some to the Cinque Ports, some to one place, some to another, Mr. Garland, who served for that place, suddenly and jocularly moved the Speaker, that we give not any legacies before the Speaker was dead. Which conceit so took with the House, as for that time Queenborough was reprieved, but was voted for the future to be dismembered, and to be added to the county.

It was moved also for Woodstock, that that might not be dismembered; but it was according as was reported.† Morpeth, in Cumberland, was moved to have a member, and that one shall be taken from the county,‡ but that was denied. The towns in Cornwall were dismembered, and a member added to Bodmin, there.§ The rest all passed according to the Instrument.

Then they proceeded to the thirty-second article, and voted that the office of the Lord Protector over these nations, shall be elective, and not hereditary. Wherein it was observable, that there was not any, the least debate upon it, nor one negative to the question.

* See *Parl. Hist.* (1763,) xx. 250—252.

† "Resolved, that the House doth agree with the Committee, in transferring the burgess from Woodstock to Banbury." *Journals.*

‡ Which sent only two. *Parl. Hist.* xx. 251.

§ Here is, probably, some error respecting Bodmin. It was "Resolved, that the House doth agree with the distribution brought in by the Committee, for members to serve in Parliament, for the county of Cornwall, and the several places therein mentioned, in the said distribution." *Journals.*

The distribution gave "Cornwall 8, Launceston 1, Truroe 1, Penryn 1, Eastlow and Westlow 1." *Parl. Hist.* xx. 250. The present distribution, as restored in 1658-9, (see vol. iii. p. 74, *note.*) gives 2 for the County of Cornwall, and 42 for 21 boroughs.

Such, especially when compared with London and Middlesex, is the applauded "virtual representation," and such Sir William Blackstone's "kind of democracy, chosen by the people from among themselves." See vol. iii. p. 148, *note* †.

Then they debated the thirty-fourth article, and voted, that the great officers therein named, shall be chosen by the approbation of Parliament; and added to them the Chief Baron, and all the Barons and Judges of the Courts at Westminster, the Judges of Ireland, and the Judges of the Courts of Justice in Scotland. And it was moved, but not granted, that the Lord Mayor of London, and strongly pressed, that at least the Lieutenant of the Tower, might have the Parliament's approbation.

This was the work of that day, and it was a day of the greatest dispute of business that I had known in the whole Parliament.

Thursday 7. There was a report from the Committee, concerning Religion, to whom the thirty-fifth, thirty-sixth, thirty-seventh, and thirty-eight articles were referred.

Resolved, that the true Reformed Protestant Christian religion, as it is contained in the Holy Scriptures of the Old and New Testament, and no other, shall be asserted and maintained, as the public profession of these nations.*

Friday 8. It was voted, that no laws shall be made to compel any person or persons to conform to the doctrine, worship, and discipline, publicly professed, without consent of the Lord Protector and Parliament.

To which negative, there were several provisoes endeavoured to be applied, as:

* "*Eodem die, post meridiem.* Resolved, that until some better provision be made by the Parliament, for the encouragement and maintainance of able, godly, and painful ministers, and public preachers of the gospel, for instructing the people, and for the discovery and confutation of errors, heresy, and whatsoever is contrary to sound doctrine, the present public maintainance shall not be taken away nor impeached.

"That it be referred to the Committee to whom the Ordinance concerning uniting parishes is referred, to consider how such impropriators and colleges, who are bound to find ministers, and are not charged with any certain or considerable proportion, may be compelled to allow a competency of maintainance for a minister.

"That it be referred to the same Committee to consider of an Act to enable such cities, corporations and market towns, as have no competent maintainance for the ministers in the several parishes, to tax themselves for raising a convenient maintainance." *Journals.*

Provided, that such Bills as shall be hereafter agreed upon by the Parliament, requiring from such ministers and preachers of the Gospel as shall receive the public maintenance for instructing the people, to subscribe to the doctrine and public profession, and such Bills also as shall be presented, for compelling people to come to church upon the sabbath-day,* or to other congregational and Christian meeting-places, shall pass into and become laws, within twenty days after the presentation to the Lord Protector, although he should not give his consent thereunto.

Saturday 9.† The like vote was passed, as to such laws as should be made for the restraining of atheism, blasphemy, damnable heresies, popery, prelacy, licentiousness, and profaneness, which took up the whole day's debate.‡

Monday 11.§ It was desired that the heresies might be enumerated,* which, after another whole day's debate, was voted accordingly.||

* "Enjoining attendance unto the preaching of the word, and other religious duties on the Lord's Day." *Journals.*

† "Resolved, that, without the consent of the Lord Protector and Parliament, no law or statute be made for the restraining of such tender consciences, as shall differ in doctrine, worship, or discipline, from the public profession, and shall not abuse this liberty to the civil injury of others or the disturbance of the public peace." *Journals.*

‡ Corrected from the *Journals.*

Eodem die, post meridiem.

"The House met and resumed the former debate.

"The question being put that these words, 'damnable heresies,' do stand in this question,

"The House was divided. The Yeas went forth. *Yeas,* 91. Colonel Rous and Colonel Matthews, Tellers. *Noes,* 69. Colonel Jones, and Commissary-general Whalley, Tellers. So it passed in the affirmative." *Journals.*

"Resolved that the House do rise for an hour, and then sit again, and continue this debate.

§ The House, according to former order, proceeded on the debate adjourned on Saturday last.

"Resolved, that the Speaker do leave the chair for an hour.

"*Eodem die, post meridiem.* The Speaker resumed the chair.

"Resolved, that candles be brought in." *Journals.*

|| "The question being put, that there be a particular enumeration of heresies, after the words, 'damnable heresies.'

Tuesday 12. The enumeration of heresies was referred to a Committee*, and the debate of atheism, blasphemy, and profaneness, taken up; which were conceived to be words of that general notion, as might expose the godly party, and people hereafter, to some danger of suffering under those laws.†

Not agreeing hereupon, it gave occasion of reviving a motion,‡ which had been made often times before, against the books of one Biddle;§ the one containing two catechisms,||

"The House was divided. The *Yeas* went forth. *Yeas*, 85. Colonel Jones and Colonel Montagu, Tellers. *Noes*, 84. Sir Richard Onslow and Mr. Fitz-james, Tellers. So it was resolved.

"Resolved that Colonel Venables, a member of Parliament, have leave to go upon the expedition." *Journals.*

This expedition was against the Spaniards, in concert with Admiral Penn. It ended in the capture of Jamaica. See *infra*, vol. iii. p. 102, *note* *.

* "To consider of the particular enumeration of damnable heresies, and where it shall be inserted." *Journals.*

In this Committee of sixty-two are the names of Henry Cromwell, Glynn, Whitlock, Fynes, Ashley Cooper, Widdrington, Lisle, Lambert, Vane, and Lord Broghill.

† It was, however, at length, "Resolved that the word, 'Atheism,' be part of the question." *Journals.*

‡ Previous to which, "Sir William Masham reports from the Committee empowered to confer with divines, [*supra*, p. cviii. *note*,] touching articles of faith, twenty articles, with the proofs thereof, from Scripture.

"Resolved, that three hundred copies of these articles be printed, only for the service of the House; and that they be delivered to the clerk, to deliver one to every member: and that no greater number be printed, nor that any of them be delivered to any other than the members." *Journals.*

Thus, it seems, from this economical resolution, to print only three hundred copies, and yet to "deliver one to every member," that only three hundred of the four hundred and sixty members, had yet qualified, by signing the recognition. See *supra*, pp. xxxv. xxxvi.

§ See *infra*, p. 57, *note*.

|| "A Two-fold Catechism. The one simply called a Scripture Catechism; the other, a Brief Scripture Catechism for children. Wherein the chiefest points of the Christian religion, being question-wise proposed, resolve themselves by pertinent answers, taken, word for word, out of the Scripture, without either consequences or comments.

"Composed for their sakes that would fain be *meer christians*, and not of this or that sect, inasmuch as all the sects of Christians, by what names

the other entituled "Twelve Arguments, refuting the common opinion of the Deity of the Holy Ghost,"* which was condemned to be burnt by the common hangman, and a committee appointed to examine the book, to send for the parties and printers, to restrain them if they see cause, and to suppress his keeping of a school.†

soever distinguished, have either more or less departed from the simplicity and truth of the Scripture.

"By John Biddle, Master of Arts, of the University of Oxford,

"'Isa. 8, 20. To the law and to the testimony. If they speak not according to this word, it is because there is no light in them.'

"London, Printed by J. Cottrell, for. R. Moone, at the Seven Stars in Paul's Church-yard, neer the great north door. 1654."

* "The Apostolical and True Opinion concerning the Holy Trinity, revived and asserted: partly by Twelve Arguments levied against the traditional and false opinion about the Godhead of the Holy Spirit: partly by a Confession of Faith, touching the Three Persons.

"Both which having been formerly [1647] set forth, are much altered and augmented, with explications of Scripture, and with reasons; and finally with testimonies of the Fathers and of others.

"All reprinted, *Anno.* 1653. By John Biddle, M.A."

† "Resolved, that a Committee be appointed to consider of these two books now presented; the one intituled:

"The Apostolical and True Opinion, concerning the Holy Trinity, revived and asserted, or Twelve Arguments drawn out of Scripture, wherein the commonly received opinion, touching the Deity of the Holy Ghost, is clearly refuted.'

"And the other intituled, 'A Two-fold Catechism.' Both of them by John Biddle.

"And have power to send for the author before them; and to restrain him, and to suppress his school; and also to send for the printers and publishers thereof; and to seize upon and call in the books, and to prevent the farther printing of them; and to examine the particulars of the books; and to report the same, with their opinion to the House.

"Resolved, that it be referred to the Committee for printing." *Journals.*

On this arduous service, were added several lawyers, soldiers, and country-gentlemen; among the rest, that profound theologian, and exemplary moralist, Sir Anthony Ashley Cooper. See vol. ii. p. 419, *note* †.

For the result of this reference, the House, *Zelatores justitiæ, et fidei catholicæ defensores,* as King James described himself, when he burned two Unitarians in 1611, (see *infra*, p. 118, *note*), could not wait, before they had

Wednesday *13. This day was spent in the debate of another part of the proviso to the Lord Protector's negative in matters of religion, viz. that such Bills as were presented to the Lord Protector, for restraining such as should publish, print, or preach any thing against the profession established, should pass into and become laws, without the Protector's consent.

After a whole day's debate, the word "publish," was agreed to be left out, and to be made no part of the question. But the words, "preach and print," were voted upon the question, to be part of it. But then came the latter part of the question, which, indeed, was *cardo rei*, the very hinge of all. Whereby, it was endeavoured to exclude the necessity of the Lord Protector's concurrence in making of laws to such purposes. Whereby they would, in a manner, disable him from being what they had voted him, that is, a Protector; especially in that point which is of most weighty and tender consideration of any, that is, the freedom of the tenderness of our consciences.

This could not be agreed upon,† so it was deferred until the next day. Only Biddle, whose books were condemned

"Resolved, that the book intituled 'The Apostolical and True Opinion,' &c. doth contain impious and blasphemous opinions, against the deity of the Holy Ghost.

"That the House doth adjudge the said book to be burnt by the hand of the common hangman.

"That the Sheriffs of London and Middlesex, be required to search for, and seize, all the printed copies of the said book; and to cause them to be burnt, accordingly, at the Old Exchange, and in the New Palace at Westminster, on Thursday next.

"That John Biddle be sent for in custody, as a delinquent.

"That the Serjeant-at-arms do seize, and cause to be seized all the printed copies of the said book, to be burnt as aforesaid." *Journals.*

† "The question being propounded, that these words be part of the question, viz. 'which shall be agreed upon by the Lord Protector and the Parliament,'

"The House was divided. The *Noes* went forth. *Noes*, 80. Mr. Grove and Mr. Bulkeley, Tellers. *Yeas*, 62. Mr. Maidstone and Colonel Rous, Tellers. *Ibid.*

the day before, was now apprehended, and brought before the bar, and committed to the Gatehouse.*

* "The House being informed, that John Biddle, being apprehended by the Serjeant-at-Arms, according to the order of the House, was at the door, he was called in:

"Being come to the bar, he kneeled awhile, till Mr. Speaker bid him stand up. And being demanded what his name is, he answereth, 'John Biddle.'

"Being showed the book intituled, 'The Apostolical and True Opinion concerning the Holy Trinity, Revived and Asserted,' saith, he doth acknowledge the book, and the contents of it, and that he wrote it. And being showed the book intituled, 'A Twofold Catechism,' saith, he knoweth the book, and the contents of it, and that he wrote it. Denieth he keepeth a school. Saith, he hath no congregation.

"Being asked, who printed these books, saith, hitherto he hath answered as a Christian, to give an account of the hope that is in him. What the law of Christ doth warrant him to answer, he will do; but beyond that, he will not. The law of Christ enjoins him not to betray his brethren.

"Being asked, whether the law of Christ did enjoin him to believe the Holy Ghost is not God; saith, the law of Christ doth no where tell him the Holy Ghost is God. Thereupon, he was ordered to withdraw.

"Afterwards, he was called in again. Being come to the bar, he was, by order of the House, demanded by Mr. Speaker, 'whether the Holy Ghost be God?' Saith, he hath examined the Scriptures, and doth nowhere find, in the Old or New Testament, that the Holy Spirit is God. He doth own the books, and his opinion is sufficiently declared in them.

"Being demanded, whether Jesus Christ be God, from everlasting to everlasting, answereth, he doth own the books, and therein hath declared his judgment. But, saith, he doth not find, in Scripture, where Jesus Christ is called the Most High God, or God from everlasting to everlasting.

"Being asked, whether God be confined to a certain place, saith, this is not the hope that is in a Christian; therefore, there is no necessity lying on him to answer.

"Being asked, whether God hath a bodily shape, saith, he hath answered sufficiently to that already.

"Ordered, that John Biddle be committed prisoner to the Gatehouse, in Westminster, and there to be kept close prisoner, without pen, ink, or paper; in order to a further proceeding against him.

"Resolved, that the Committee do proceed in the reference of these two books of Biddle's." *Journals.*

The "Gatehouse, situated near the west end of the Abbey," is de-

Thursday 14,* *Friday* 15. Voted, that the damnable heresies, shall be enumerated, and by this Parliament,† and that the printing and preaching be intended only against such fundamental doctrines as shall be agreed upon by the Lord Protector and Parliament.‡

Note, that when the question was wholly put upon the proviso, whereby it was provided that laws should be made without consent of the Lord Protector, against "popery, prelacy, licentiousness, or profaneness," it was moved and desired, that to those words there might be added the word "presbytery," but it was not seconded by any.§

scribed, in 1708, as, "the chief prison for the city of Westminster liberties, not only for debt, but treason, theft, and other criminal matters. The gates were built by Warfield, *cellerer* to the Monastery, in the reign of Edward III." See "New View of London," ii. 745.

* Petitions from "the Justices of Peace, and the Grand Jury" of "the West Riding of the County of York," and from "the Mayor and Commonalty of the City of York," were read, and referred to a Committee.

This Committee, besides many other members, included "all the gentlemen that serve for the five northern counties," and "all the gentlemen of the Long Robe, members of the House." They were "to consider touching a Court of Justice to be erected at York for the five northern counties, and how the probate of wills and granting administration and recovery of legacies may be settled throughout England and Wales; and the same "in Ireland." *Journals*. See *infra*, p. 17, *note*.

† "Dec. 15. The question being put, that leave be given to speak against these words: 'damnable heresies, to be particularly enumerated,' it passed in the negative.

"Resolved, that in the last vote, next after the word 'enumerated,' these words, viz. 'by this Parliament' be inserted." *Journals*.

‡ "Dec. 14. The question being propounded, that these words, 'which shall be agreed on, by the Protector and the Parliament,' be part of this question,

"The House was divided. The *Noes* went forth. *Yeas*, 23. Commissary-general Whalley and Colonel Goffe, Tellers. *Noes*, 76. Sir Richard Onslow and Mr. Bulkeley, Tellers.

§ The Presbyterians had not been so complaisant in 1648. Then, under the authority of "the Act of the Committee of Estates of Parliament, for renewing the Solemn League and Covenant," they declare "against all error, heresy, and schism," and thus assign a "bad eminence," to the religious profession, now prevalent in this Parliament:

Likewise, when it was voted that there should be no printing nor preaching against such fundamentals as shall be agreed upon by the Lord Protector and Parliament, it was moved, that the twenty articles which were brought in by the Divines, and presented to the House, as all fundamental, and necessary to salvation, might pass the approbation of the House, and the Lord Protector's consent, and so that that vote might refer to those articles. But, upon perusal of the articles, they were laid aside, and not thought fit to be further proceeded upon at that time.*

The articles of religion being thus voted, they proceeded† to the rest of the articles of the Government, namely, the thirty-ninth and fortieth; and agreed them all in substance, according to the Instrument.

They did also agree upon the form of the oath for the Protector, and likewise for the Council; and last of all, that immediately after the death of every Lord Protector, if a Parliament be not then sitting, or not then already summoned, a Parliament be summoned to meet forthwith.‡ This

"Independency, Anabaptism, Antinomianism, Arminianism, and Socinianism, Familism, Libertinism, Scepticism and Erastianism." Against these they say: "the carrying on the work of uniformity shall be studied and endeavoured by us, before all the worldly interests."

Having thus given the watchword of persecution, for uniformity is nothing less, (though of gentler sound than "Jesus and no quarter!" the word of the Covenanters, marching against Montrose,) and proposed to violate the freedom of their fellow-citizens on questions of the dearest interest, these Protestant inquisitors immediately complain that "many have, of late, laboured to supplant the liberties of the Kirk;" and, *proh pudor!* they resolve to "vindicate and maintain the liberties of the subjects, in all those things which concern their consciences, persons, and estates." See "The Confession of Faith, &c. of public authority in the Church of Scotland." *Glasgow*, (1753,) p. 467.

* "The first article was read, in these words: 'The Holy Scriptures of the Old and New Testament, are the word of God, and the only rule of knowing him savingly, and living unto him in all holiness and righteousness, in which we must rest. Which Scriptures, whoso doth not believe, but, rejecting them, doth, instead thereof, betake himself to any other way of discovering the mind of God, cannot be saved.'" *Journals.*

† "*Eodem die, post meridiem.*" *Ibid.* ‡ See *Ibid.*

being done, there remained nothing more of the Instrument to be debated; but only the number of the standing forces, and their continuance, and the consideration of the revenues, which were ordered for the next day's business.

The petition of divers lords of manors, and owners of commons, and inter-commoners, being fen grounds, in the Isle of Ely, and counties adjacent, in behalf of themselves, the tenants, and others, was read, and committed to the Committee for the fens of Lincolnshire.*

Saturday 16. The matter of the twenty-seventh article was taken into consideration, and after a whole day's debate

Resolved, that for maintaining of 10,000 horse and dragoons, and 20,000 foot, in England, Scotland, and Ireland, for the defence and security thereof, and also for a convenient navy of ships for guarding the seas, a revenue be raised, to continue until forty days after the time appointed for the sitting of the next Parliament, unless the Protector and the Parliament, the Parliament sitting, or the Protector and his Council, in the intervals of Parliament, shall otherwise think fit to lessen the same, in the mean time.†

Monday 18. Resolved, that a report shall be made from the Committee of the revenue.

It was represented, that for the last seven years the assessments had run at 90,000*l.* *per mensem*, besides the sales of revenues, bishops, deans, and-chapters, seizures, forfeitures of papists and delinquents, and several other advantages.

Yet, notwithstanding, there are great arrears of debts upon us. Therefore, if we keep up our forces, or our charge as high now, when we have voted but 60,000*l.*, we must needs expect a vast debt, and an impossibility to discharge it. It will make the nation needy and necessitous; and in fine, will bring ruin upon us.

But, for this proportion of 30,000 men, it may well be that the 60,000*l.* *per mensem* may suffice; and if that number be not enough we can enlarge it, when we fall upon the consideration of the militia.‡

* Corrected from the *Journals*. † *Ibid.*

‡ "The reporter brought in a particular of all the revenues:—

‡ " * * * * 24,000*l.*; * * * * 1254*l.*; Saymaster of Tin, 2000*l.*

These kind of debates were had to and fro, but in the end they came to this resolution, upon the twenty-seventh article:—

Probate Office, 10,000*l.*; Exchequer, 20,000*l.*; Jersey and Guernsey, * * *.; * * * *, 4000*l.*; * * * * *, 4000*l*; Custom and Excise, in Ireland, 20,000*l.*; Customs in Scotland, 9000*l.*; no Excise there but 9000*l.*; Customs of French Wares, if permitted, would raise 150,000*l.*; Post-Office, 10,000*l.*; Wine-Office, 1500*l.*; Papists and Delinquents, 60,000*l.*; Inn work, 4000*l*; Excise, 400,000*l.*; Custom, 400,000*l.*

" Papist and Delinquents, in Scotland and Ireland * * *.; Revenues in Scotland and Ireland, Deans' and Chapters' lands, in Scotland and Ireland, to be sold at rent of 3*d.* per acre.

" Impropriations of Papists', Delinquents', King, Queen, Prince, Bishops', Dean and Chapters', to pious uses.

" Tenths and first fruits not to be demanded, as an unnecessary charge to the parsons, and the revenue not considerable.

" The remaining lands, and the revenues in Scotland and Ireland, to be sold in fee farm, reserving 3*d.* per acre.

" One fourth part of the Excise to be set apart, for the payment of the public debts.

" All cathedral and collegiate churches to be bestowed upon the cities and counties where they stand, to be kept up and maintained.

" No value at all to be set upon Whitehall, Saint James's House and Park, the Mews, Greenwich House and Park, Somerset House, Hampton Court, and the Honour and Manor of Hampton Court, with all the parks and grounds thereunto now belonging, Windsor Castle, the little Park there, and other the land thereunto now belonging; the house called the Manor, in or near the City of York, [see *Journals*, Dec. 19,] the Tower, and which are to be reserved for the Protector's use and pleasure, yet may be estimated, though, as no part of the public revenue, at 1254*l.* 15*s.* 4*d.* This was the effect of the report.

" On the other side, the public charge was presented unto us,

" As, namely, that the charge of our land-forces, *per mensem*

was	116,000
Sea-forces	36,945
The Government	200,000
Ordnance, yards, docks, &c.	8,000
Lame soldiers and widows	50,000

" In sum our charge is 18,000*l.* *per mensem*, greater than our receipts.

" Besides, we did receive but at the rate of twelve months *per annum*, and we pay thirteen months.

" The assessment in England at 60,000*l.* *per mensem*, comes but to

That a constant yearly revenue of 200,000*l.* *per annum*, be settled and established upon the now Lord Protector, and the succeeding Lords Protectors, for the time being, respectively, for defraying the necessary charges for administration of justice, and other expenses of the Government, and for the support of his and their state and dignity, as may be for the honour of this Commonwealth of England, Scotland, and Ireland. And that the said 200,000*l.* *per annum*, be constantly paid out of the public receipt of the Exchequer, by warrant of the Lord Protector and the Council; and shall not be taken away nor diminished, without the consent of the Lord Protector and Parliament.*

After which, we proceeded upon the thirty-first article, and voted it, in substance, according to it, whereby the particular way of raising the revenue†———

58,500*l.* The rest is eaten up, in the four pence per pound charge in collecting it.

"Besides, there is a debt due to Penn's fleet of 19,215*l.*; to Blake's fleet 5,520*l.* And by contract to the navy and Office of Ordnance, 200,000*l.*

"To this was objected, again, that the sale of the goods upon the prize office was wholly omitted; which came, as was informed, to 2,000,000*l.*

"But in the twelfth year of Queen Elizabeth, by Burleigh's account, her revenue was then but 188,000*l.* And her charge but 110,000*l.* And yet she paid her fleet and all other expences; but, in truth, the charge of her navy was then but 20,000*l.* *per annum*." *Goddard* MS.

Of the resolution and the report there are no appearances on the *Journals* of this day. I have printed this, probably, only remaining copy of the report, under all its imperfections; as it may possibly assist to explain other historical documents of the same period.

* Corrected from the *Journals*.

† Here Mr. Goddard's MS. account of the transactions of the Parliament, 1654, closes abruptly. According to the *Journals*, "the Committee," were "to bring in the report to-morrow, upon the one and thirtieth Article."

I shall add, during the remaining days of this short-lived Parliament, from the *Journals*, such passages as may appear to assist my design of preserving and connecting the principal transactions; and, especially, the Parliamentary History of both the Protectorates.

Tuesday 19. Mr. Read reports from the Committee to whom the blasphemous books, written by John Biddle, were referred, the rude and obstinate behaviours and misdemeanours* of the said John Biddle; and of Richard Moone, and John Cottrell, the printer and publisher of the said books, before the said Committee; and that they refused to tell their names, or to give answer to any questions demanded of them by the said Committee.

Resolved, that Richard Moone and John Cottrell, do stand committed to the prison of the Gatehouse, for their contempts and misdemeanours.

Eodem die, post meridiem. Resolved, that the Committee, to whom the preparing of a Bill upon the votes concerning the Government is referred, be empowered to consider of the printed Instrument, intituled "the Government of the Commonwealth of England, Scotland, and Ireland; and, where they find any thing defective in the votes, which hath not been already debated in the House, to resort to the House with such particulars as may be fit to be supplied without altering the substance of what the House hath already voted.†

Ordered, that the Serjeant-at-Arms, do take into his custody, the bodies of Richard Moone and John Cottrell, and deliver them over to the Gatehouse, according to the order of this House.

Thursday 21. The House being informed, that there was one did deliver divers books at the door, this day, intituled, "*Dissertatio de Pace*, &c. or a Discourse touching the Peace and Concord of the Church."‡

* The common cant-language of persecutors; let a victim of their oppression only venture the expostulation: "strike, but hear me!"

† The *Journals* are almost entirely occupied, till the dissolution, with divisions upon alterations, proposed by this Committee to a Grand Committee of the whole House. The debates, during those days, could they be recovered, would, probably, be very interesting.

‡ "Wherein is elegantly and accurately argued, that not so much a bad opinion as a bad life, excludes a Christian out of the kingdom of Heaven; and that the things necessary to be known for the attainment of salvation, are very few and easy; and, finally, that those,

He was, by command of the House, called in: and being called to the bar, Mr. Speaker, by command of the House, demanded his name. He answered, Philip Dancy; that he lives in Lombard Street, and is a Norwich factor: and being showed one of the said books, acknowledgeth, that he did deliver some books of this sort and title, to divers members of this House.

Being demanded, who was the author of this book, he saith, the author he is ignorant of:* and being demanded, who delivered the books to him, saith, he can tell; but craves pardon for his silence in it; saith, he received them this morning. But, being asked where he received them, and

who pass amongst us under the name of heretics, are, notwithstanding, to be tolerated.

"London. Printed by James Cottrel, for Richard Moone, at the seven stars, in Paul's Church-yard, 1653."

* The *Dissertatio* was reprinted in 1708, and erroneously "supposed to be written by Mr. John Hales, of Eaton." *Phenix*, ii. 348—390. *Wood* seems to have led into the error by the following passage, when describing the works of John Hales:

"*Dissertatio de pace et concordia Ecclesiæ.* (Eleutheropoli,) 1628. 12mo. This book, which is much celebrated by famous authors, is printed in the same character, and at the same supposed place as his *Brevis Disquisitio;* and therefore, by the generality, is taken to be written by our author." *Athen. Oxon.* (1692,) ii. 125.

† This proscribed Discourse, was a translation of "Anonymi Dissertatio, de Pace et Concordia Ecclesiæ: edita per Irenæum Philalethen.—*Eleutheropoli* typis Godfridi Philadelphi, anno 1628." *Sandius* ascribes this *Dissertatio* to "Samuel Przipcovius, a Polish knight." See "An Historical and Critical Account of the Life and Writings of the ever-memorable Mr. John Hales." By *Des Maizeaux*, (1719,) pp. 6, 7.

I have now before me, among a collection of John Biddle's Tracts, the Discourse, 1628, in which some, apparently early, possessor has written:—

"Sam. Przypcovius, vir elegantissimi ingenii, Radzivilio Principi a Secretis, scripsit Dissertationem de Pace et Concordiâ Ecclesiæ. V. Martini Ruari Epistolas xxviii., xxxi. ad H. Grotium."

Przypcovius wrote the earliest Life of Faustus Socinus. This, John Biddle translated from the Latin, in 1653, and he was probably the translator of the *Dissertatio*. See Dr. Toulmin's *Faustus Socinus*, (1777,) p. 439.

who printed them, craves pardon therein also, and thereupon withdrew.

The House being informed, there was another at the door who brought those books,

He was called in. And being come to the bar, and being demanded his name, answered Thomas Carpenter; that he lives in Paul's Church-yard, at Richard Moone's house. Saith John Danyell, apprentice to Moone, wished him to deliver them to this man in the morning.

He saith, the books were not printed in his house, because Moone hath no press there; but knoweth not who did print them, nor who was the author of them. He was only desired to bring them along.

Resolved, that the said Philip Dancy be committed to the custody of the Serjeant-at-Arms.

Resolved, that this book be referred to the consideration of the Committee, to whom Biddle's books be committed, to examine the substance thereof, and who were the authors, printers, and publishers; with power to send for persons, papers, witnesses, and to secure such persons as they find cause, until the House be acquainted therewith. That the quorum of the said Committee be five.

Resolved, that the Serjeant-at-Arms be required to enter into the house of Richard Moone and John Cottrell, or any others, where the said printed books, intituled "*Dissertatio de Pace*, &c. or a Discourse touching the peace and concord of the Church," or any of them shall be found, and to seize all the said books.

Resolved, that the merchants, commonly calling themselves merchants of the intercourse, residing in London and elsewhere, within this Commonwealth of England, Scotland, and Ireland, shall pay, and be liable to pay, all such sum and sums of money as shall be assessed and taxed upon them, or any of them, as any merchant-strangers; any privilege of exemption, by colour or pretence of the great intercourse made in the time of King Henry VII. and Philip, Duke of Burgundy, or otherwise, to the contrary notwithstanding.

Saturday 30. The House being informed, that one The-

auro John, in the lobby, without the door of the Parliament, did there draw his sword, and struck at divers persons; and ran with his sword against the door of the House.

He was, by order of the House, brought to the bar. Where, being demanded by Mr. Speaker, what his name was, answered, Theauro John. Being asked, why he came hither? Saith, he fired his tent, and the people were ready to stone him, because he burnt the Bible, which he acknowledgeth he did; saith, it is letters, not life; and he drew his sword, because the man jostled him at the door: saith, he burnt the Bible, because the people say it is the word of God, and it is not; it deceived him. And saith he burnt the sword and pistols and Bible, because they are the Gods of England. He did it not of himself. And being asked, who bid him do it; saith, God. And thereupon was commanded to withdraw.

Resolved, that the said Theauro John be committed to the Gate-house, Westminster, in order to a further proceeding against him, both for drawing his sword at the Parliament door, and for burning the Bible; and affirming that the same is not the word of God. And that there be a charge given to the keeper to take notice of any persons as shall resort to him.

Resolved, that it be referred to a Committee to examine him; and to present to the House their opinion what is fit to be done, in respect of both these offences.* And that it

* *Whitlock* says: "Dec. 30. A Quaker came to the door of the Parliament, and drawing his sword, fell to slashing those near him, and knocked at the door, aloud; he was laid hold on, and committed to prison." *Memorials*, p. 592.

It has been justly observed, on this passage, that "according to the account given of this man in the Journals, his principles seem not to quadrate altogether with those of the present Quakers." *Parl. Hist.* xx. 402.

This learned lawyer appears, in his last years, to have adopted the theological opinions of the Quakers, perhaps a consequence of his intimate associations with William Penn. See "Quench not the Spirit; or Several Discourses of the light, power, and guidance of the Holy

be referred to a Committee, to whom the business touching Biddle is referred, to report with speed.

Resolved, that it be referred to Mr. Serjeant Glyn, Mr. Lechmere, Mr. Recorder, Mr. Turner, Mr. Godfrey, Mr. Long, Mr. Beale, Mr. Brisco, Colonel Birch, Lieutenant Colonel Kelsey, Mr. Lister, Mr. Bedford, Mr. Timbs, or any three of them, to prepare a Bill, upon the debate of the House touching Quakers; with power to them, to receive informations, from the members of this House or others touching these persons; the better to enable them to describe them in this bill.

Wednesday, Jan. 10, 1654-5. The House resumed the debate upon the bill declaring and settling the Government of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging.

The question being put that a conference shall be had with the Lord Protector, concerning this bill, before the bill be ingrossed,

The House was divided. The *Yeas* went forth. *Yeas*, 95. General Disbrowe and Colonel Jones, Tellers. *Noes*, 107. Sir Richard Onslow and Colonel Morley, Tellers. So it passed in the negative.

Monday 15. Resolved, that none shall stay above in the chamber, during the time of prayers in the House; and that, immediately before prayers, the Sergeant do go up and require all the members to come down.

A Bill, intituled an Act touching lunatics and idiots, was,

Spirit of God, to make men and women the true children of God. As they were delivered, in his own family, at several times. By that great man, Sir Bulstrod Whitlock, once Ambassador to Queen Christina of Sweedeland; and Lord Commissioner of the Great Seal of England," (1711) *passim.*

William Penn was the Editor of these Discourses. In "An Epistle to the Reader" he relates a very serious conversation with the author, "about the seventieth year of his age," and assures the public that "the manuscripts of these Discourses come from a daughter of Sir Bulstrod Whitlock, where they have lain since her father's death, with other pieces of great value, in the author's own hand-writing."

this day, read the first time; and was ordered to be read the second time on this day fortnight.

An Act for the uniting of Ireland into the Commonwealth of England, the re-establishing the Courts of Judicature there, the placing of Judges in the said Courts, and making a great seal, and other seals, to be used in Ireland, was read the first time.

Ordered that this Bill be read again on this day se'nnight.

Mr. Read reports from the Committee, to whom the books called "The Twofold Catechism," and other books of John Biddle, and to whom the business touching Theauro John was referred.*

In pursuance of the order of the 12th of December, the Committee for printing did meet, and resolved to send for John Biddle. Who, being sent for and examined, whether he did own the books referred to the consideration of this Committee; and whether he gave any order for the printing and publishing of the said books.

He refused to give any other answer; but that he had formerly given his answer to the House, to the which he did adhere. And that both he and his books being already judged,† it was to no purpose to be examined concerning the same.

Whereupon, they ordered that Biddle should be remanded; and the Committee proceeded in the consideration of the book called "The Twofold Catechism."

The Committee, in pursuance of the former order, took into consideration the book called "The Apostolical and True Opinion concerning the Holy Trinity revived and asserted, and a Confession of Faith touching the Three Persons."

* See *supra*, p. cxv. "Thomas Tany, Goldsmith, who by the Lord's voice that he heard, changed his name from Thomas, to *Theauraw John Tany*, on the 23rd of November, 1649, living then at the Three Golden Keys, without Temple-bar, London. He was then, and before, a blasphemous Jew." *Athen. Oxon.* (1692) ii. 200 *note*.

† See *Ibid.* pp. cxv. cxvi. *note*.

Several passages in the book called "The Two-fold Catechism," quoted by the Committee, were read.

Resolved, that this House doth agree with the Committee in this vote, that the whole drift and scope of the book called "The Two-fold Catechism," written by John Biddle, is to teach, and to hold forth many blasphemous and heretical opinions.

That this House doth agree with the Committee, that, in the preface of the said Catechism, the author thereof doth maintain and assert many blasphemous and heretical opinions, and doth therein cast a reproach upon all the catechisms now extant.*

Several passages contained in the book called "The Apostolical and True Opinion," quoted by the Committee, were now read.†

* He complains of "all catechisms" as "generally being so stuffed with the supposals and traditions of men, that the least part of them is derived from the word of God. For when councils, convocations, and assemblies of divines, justling the sacred writers out of their place in the church, had once framed articles and confessions of faith, according to their own fancies and interests, and the civil magistrate had, by his authority, ratified the same, all catechisms were afterwards fitted to those articles and confessions, and the scripture either wholly omitted, or brought in only for a show; not one quotation, amongst many, being a whit to the purpose." *Preface*, pp. 1, 2.

† They probably neglected to read, or, at least, to regard with attention, the following address to the "christian reader," from the pious and learned author, whose *mens conscia sibi recti* still upheld him,

On evil days though fallen, and evil tongues.

"I beseech thee, as thou tenderest thy salvation, that thou wouldst thoroughly examine the following disputation, in the fear of God, considering how much his glory is concerned therein; and at any rate forbear to condemn my opinion as erroneous, till thou art able to bring pertinent and solid answers to all my arguments; for thou must know, that though I have contested with sundry learned men, yet hath none hitherto produced a satisfactory answer to so much as one argument. Farewell."

See "A Short Account of the Life of John Biddle, M. A. sometime of Magd. Hall, Oxon" (1691,) p. 16. According to *Wood*, this life was first published in 1682, in Latin, under the title of "Joannis Bidelli, (Angli,) Acad. Oxoniensis quondam Artium Magistri celeberrimi, Vita." It was attributed to "John Farington, J.C.T. of the Inner Temple." *Athen. Oxon.* (1692), ii. 202, *note*.

Resolved, that this House doth agree with the Committee, that the said book is full of horrid, blasphemous, and execrable opinions, denying the Deity of Christ and of the Holy Ghost.

That it be referred to the Committee for printing, to bring in a Bill for punishment of the said John Biddle.*

That all the printed books, entituled, "The Two-fold Catechism," be burnt by the hand of the common hangman.

That the Sheriffs of London and Middlesex be authorized and required to see the same done accordingly, in the New Palace at Westminster, on Friday next, at nine of the clock; and at the Old Exchange, London, at three of the clock on the same day.

That the Master, Wardens, and Assistants of the Company of Stationers, London, be required immediately to make search for all the printed books entituled "A Two-fold Catechism," and seize all the said books, and deliver them to the Sheriffs.

That it be referred to the same Committee, to consider of the articles preferred against Mr. Akehurst; and to examine the business; and to report the same, with their opinion to the House.

That it be referred to the same Committee, to consider of the information given to the House against ——— Hemmings, with power to send for him, and to examine the business, and to report the same to the House.

Ordered, that the rest of the said report be taken into consideration on Wednesday morning next.

* "In this case," says his earliest biographer, "nothing less than capital punishment could be expected. Which notwithstanding, the prisoner bare a composed and cheerful mind, hoping in God, whose cause he suffered for, for a happy event.

"Neither did this hope deceive him, for the Protector, for reasons of his own interest, dissolved that Parliament; and the prisoner, after about six months imprisonment, obtained his liberty, at the Court of the King's, or Upper Bench, by due course of law.

"Neither was he any whit discouraged by these dangers and sufferings, but betook himself to his former exercises for propagating truth, and the honour of Almighty God, concerned therein" *Short Account*, p. 7.

Wednesday 17. The House proceeded in the consideration of the Bill, declaring and settling the Government of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging.

A clause was tendered to the Bill in these words: "That, the Parliament sitting, the Lord Protector, by consent of Parliament, shall dispose and order the militia, for the peace and good of the Commonwealth; and, that in the intervals of Parliament, the Lord Protector, by the advice and consent of the major part of the council, shall dispose and order the said militia, for the ends aforesaid." Which was read the first time.

And the question being put, that it be read a second time, the House was divided. The *Yeas* went forth. *Yeas*, 50. Colonel Montague and Captain Maidston, Tellers. *Noes*, 89. Colonel Matthews and Lieutenant-Colonel Baynes, Tellers. So it passed in the negative.

The question being propounded, that the Bill be ingrossed, in order to its presentment to the Lord Protector, for his consideration and consent: and this House doth declare, that, without an agreement thereunto by the Lord Protector and Parliament, it ought not to be, in part or in whole, made use of as a law, or become binding to the people.

The question being put, that these words, "ought to be," stand in the question; it passed with the negative.

The question being put, that the word "it" shall be in the question, instead of the word "ought," the House was divided. The *Yeas* went forth. *Noes*, 114. Sir Richard Onslow and Mr. Bulkeley, Tellers. *Yeas*, 66. Lord Cleypole and Lord Broghill, Tellers. So it passed in the negative.

Resolved, that this Bill, intituled, "An Act for declaring and settling the Government," be ingrossed, in order to its presentment to the Lord Protector for his consideration and consent, and that if the Lord Protector and the Parliament shall not agree thereunto, and to every article thereof, then this Bill shall be void and of none effect.

Resolved, that the House be resolved into a Grand Committee, on this day sevennight, touching public debts.

Friday 19. Resolved, that the Act declaring and settling the Government of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging, be now read.

Eodem Die, post Meridiem. A clause was tendered to this Bill in these words: "that the Lord Protector, the Parliament sitting, shall dispose and order the militia and forces, both by sea and land, for the peace and good of the three nations, by consent of Parliament; and that the Lord Protector, with the advice and consent of the major part of the council, shall dispose and order the militia, for the ends aforesaid, in the intervals of Parliament." Which was read the first time.

The question being put, that this clause be read the second time. The House was divided. The *Yeas* went forth. *Noes*, 101. Sir William Botcler and Sir John Witterong, Tellers. *Yeas*, 97. General Disbrowe and Colonel Sydenham, Tellers. So it passed in the negative.

A proviso was tendered to this Bill, in these words: "Provided that, whereas the militia of this Commonwealth ought not to be raised, formed, or made use of, but by common consent of the people assembled in Parliament; be it therefore enacted, that the said militia, consisting of trained forces, shall be settled as the Lord Protector and the Parliament shall hereafter agree, in order to the peace and safety of this Commonwealth, and not otherwise." Which was read the first time.

Resolved, that this proviso be read the second time. The said proviso was read the second time, accordingly.

The question being put, that the debate of this business be now adjourned till to-morrow morning, the House was divided. The *Yeas* went forth. *Yeas*, 98. Lord Herbert and Colonel Jones, Tellers. *Noes*, 29. Sir Richard Onslow and Mr. Bulkeley, Tellers. So it was resolved, that the debate of this business be adjourned till to-morrow morning.

Saturday 20. Resolved, that the vote of the fifth of January instant, whereby, in order to a particular Bill distinct from the Government, it was resolved, that the yearly

sum of ten hundred thousand pounds, should be paid out of the receipt of the Exchequer, for the purposes therein mentioned, be vacated.

And the same, by command of the House, was vacated, in the presence of the House accordingly.

The House proceeded in the debate adjourned yesterday, upon the proviso then in debate.

Eodem Die, post Meridiem. The question being propounded, that these words, "Provided that whereas the militia of this Commonwealth ought not to be raised, formed, or made use of, but by common consent of the people assembled in Parliament," be part of the proviso.

The House was divided. The *Yeas* went forth. *Yeas*, 109, Sir Richard Onslow and Colonel Birch, Tellers. *Noes*, 82. Lord Broghill and General Disbrowe, Tellers. So it passed with the affirmative.

And the whole proviso being put to the question, it was resolved that this proviso be part of the Bill.

A proviso was tendered to this Bill; "that no future Lord Protector shall consent to take away the negatives, hereby declared to be in the Lord Protector."

And the question being put, that this proviso be received, it passed in the negative.

Resolved, that the debate upon this Bill, and the present debate in the House, be adjourned till Monday morning.

Monday 22. His Highness the Lord Protector, being in the Painted Chamber, and the Parliament, with their Speaker, by his command, attending him there, was pleased to dissolve this Parliament.*

* After a long speech, abounding in scriptural allusions, and thus uncourteously concluding: "I think it my duty to tell you, that it is not for the profit of these nations, nor for common and public good, for you to continue here any longer, and therefore I do declare unto you, that I do dissolve this Parliament." See Whitlock's *Memorials*, pp. 592–599; *Parl. Hist.* xx. 404—431. On the representatives of Charles Stuart, in this Parliament, and their *manœuvres*, see vol. iii. p. 551, *note*.

"The Protector," says *Whitlock*, "began to be weary of the Parlia-

THIS hasty dissolution, before the Parliament could compleat, and present for the acceptance of the Protector,

ment, and some of his Council were not backward to promote what they perceived he was inclined to have done." He adds, that there was "much debate at Whitehall about dissolving the Parliament." *Memorials*, p. 592.

"Quinque mensibus jugiter altercando attritis," says Dr. Bates, "res suas Cromwellius hisce in comitiis nequicquam potuerit promovere. Nec in Senatu solummodo vigent Spiritus Democratici, sed in Exercitu." *Elenchus*, p. 290. (After the debates and altercations during five months, Cromwell could not serve his purpose by these assemblies. Nor did the spirit of democracy prevail only in the senate, but also in the army.)

Then, having mentioned a project of the army, for bringing Cromwell before the Parliament as a criminal, Dr. Bates thus proceeds:

"Certè Præfecti trium Equitatûs millium et qui Peditatûs manui non contemnendæ præerant, ea de re apparanda et ordinanda propinquis in ædibus Somersettanis alibique sæpiuscule convenerunt. Sed anteaquam in procinctu res foret, pervenit, prodente Prideo, in aurem Cromwellii, qui comitia properantiùs abrogando, admolitiones istas antevertit, Præfectosque militari sacramento, in posterum solutos exauctorat." *Ibid.* pp. 290, 291. (It is certain that the officers of 3000 horse, and no small number of foot, met frequently in Somerset House and elsewhere, to contrive and carry on that design. But before they could mature their purpose, they were betrayed by Pride to Cromwell. He averted the danger, by immediately dissolving the Parliament, and exacting from the officers a military oath, to secure their future allegiance.)

The anecdote which I quoted, (*supra*, p. 65, *note* †,) appears to have been borrowed from Dr. Bates. He says:

"Imò unus eò provectus est audaciæ, ut palàm pronunciare non dubitarit, è Regia potiùs stirpe adsciscendum aliquem ad Monarchiam tam propè accedentibus, quàm sibi sceptrum et coronam Cromwellius arrogaret." *Ibid.* p. 289. (One had the boldness to say openly, that it were better to invest a prince of the royal race with the monarchy, to which they seemed to be approaching, than that Cromwell should arrogate to himself the crown and sceptre.)

"The Representative sitting at Westminster," says *Ludlow*, "though garbled as he thought fit, proving not sufficiently inclined to serve his designs, but rather by prudence yielding to the strength of the present stream, in hopes the people might in time recover their oars, and make use of them for the public good; he grew impatient, till the five months allowed for their sitting should be expired; during which time he was restrained by that which he called the Instrument of Government, from giving them interruption.

"And

the new constitution, left him to rule, as he was not ill-inclined, in cases unconnected with his personal interests, according to the ancient laws, under the authority of his own Instrument

"And though they differed not in any material point from that form of government which he himself had set up, unless it were in reserving the nomination of his successor to the Parliament; yet did the omission of this one thing so enrage him, that he resolved upon their dissolution.

"The five months of their session, according to the soldier's account of twenty-eight days to the month, being expired, they were ordered to attend him in the Painted Chamber, where he made up, with words and passion, what he wanted of matter to charge them with, accusing them of endeavouring to bring all things into disorder and confusion, by raking into the Instrument of Government, which he extolled very highly." *Memoirs*, (1698,) ii. 509, 510.

The Protector had been otherwise described, even as an undoubted *pater patriæ*, in a diurnal of this time; which has oddly intermixed political information with ribaldry most vulgar and disgusting; scarcely exceeded after the Restoration.

"The speeches of the Lord Protector to the Parliament, shewing his desires, that he aimed not so much to be Protector of the People, as that the people, under him, should be protectors of themselves; and enjoy a lasting happiness, under a safe, mild, and soft government." See "*Mercurius Fumigosus*, or the Smoking Nocturnal, communicating dark and hidden news, out of all obscure places in the Antipodes, whether in fire, air, earth, or water. For the right understanding of all the mad merry people in the land of darkness. From Wedneseve, Aug. 30, to Wedneseve, September 6, 1654, p. 124."

On the severities by which this usurpation was too often sustained, Bishop Warburton has remarked, in his Notes on Lord Clarendon, that "Cromwell would have been as clement a conqueror and usurper as Julius Cæsar, had he had as much knowledge in literature and no more in human nature." *History of Rebellion*, (1826,) vii. 296.

"One of the most ridiculous pieces of cruelty that was ever heard of in the world," as justly characterized by the journalist I am about to quote, was exhibited by a contemporary prince; no usurper, but an acknowledged *legitimate*. The reader will probably recollect Voltaire's *Mazeppa*, whom Lord Byron has immortalized; though the retaliation of the reigning Duke, for the loss of his venison, was princely, indeed, compared with the vengeance of the noble, for the deepest injury which a husband can sustain.

"Letter from Hamburg, Feb. 26, 1655-6, S.V. The last week, several waggoners, coming from Breslaw, in Silesia, upon their way in the Duke of Saxony's country, perceived a stag, with a man upon his back, running with all his might. Coming near the waggons, he suddenly fell

of Government; unsupported even by the semblance of a Parliamentary sanction.

His first attention, in concert with the Council,* was engaged to publish various ordinances of a popular tendency.† Nor would the industry of his enemies, both royalists and republicans, sometimes in an unnatural union, yet against a common enemy, permit any relaxation of his well-tried and consummate vigilance.‡

down. The waggoners drawing nigh him, the poor man, sitting on his back, made a pitiful complaint, how that, the day before, he was by the Duke of Saxony, for killing a deer, condemned to be bound with chains upon that stag, his feet bound fast under the stag's belly, with an iron chain soldered, and his hands so chained to the horns.

"The miserable man begged earnestly that they would shoot him, to put him out of his pain, but they durst not, fearing the Duke. Whilst they were talking with him, the stag got up again, and ran away with all his might. The waggoners computed that he had run in sixteen hours, twenty-six Dutch miles at the least, which makes near one hundred of your English miles." *Mercurius Politicus.* No. 300. "From March 6 to March 13, 1655-6."

* They appear, by an article of Court-intelligence, to have occasionally attended the Protector at his country palace, whither hastened that incessant intruder Care;

Ocyor cervis, et agente nimbos
Ocyor Euro.

"Friday, 22 June, 1655. This evening, his Highness the Lord Protector went from Whitehall to Hampton Court, whither members of the Council also went, and there the great affairs of the nation are transacted with labour and care, as if they were at Whitehall." *Perfect Proceedings*, No. 300.

† Among the rest, to follow up the Parliamentary project (*supra*, p. l. *note* ||) respecting proceedings in Chancery. See *Whitlock*, pp. 601—608.

‡ See *infra*, pp. 231, 232, 357, *notes*; vol. ii. p. 76, *note* †; iii. 151, 531—533; iv. 151, 155, 156, *notes*. "Feb. 28, 1655. Major-general Harrison, Captain Courtney, and Mr. Carew, sent prisoners to three several places westward. 'Tis said, one to Pendennis, one to Portland, and the third to the Isle of Wight." *Mercurius Fumigosus*, p. 306.

"The Cavaliers," says Mrs. Hutchinson, "had not patience to stay till things ripened of themselves, but were every day forming designs, and plotting for the murder of Cromwell and other insurrections, which being contrived in drinke, and managed by false and cowardly fellows, were still revealed to Cromwell, who had most excellent intelligence of all things that passed, even in the King's closet; and by these unsuc-

The Protector had sent Blake into the Mediterranean, to chastise the marauding corsairs of Algiers, for their plunder of English vessels. He had also dispatched Penn and Venables, to commence hostilities against the power of Spain in the West Indies. The fleet under Penn, with a military force commanded by Venables, had sailed from Portsmouth, December 24th. Arriving at Barbadoes, March 30th, 1655,* they opened their sealed orders, which directed an attack on Domingo. In this they miserably failed, from the alleged misconduct of the commander of the land forces; but, on their return, they made an easy conquest of Jamaica.†

The war against Spain produced, as might have been expected, a disposition towards peace and amity between "Louis XIV. the most Christian King of France and

cessful plots, they were the only obstructors of what they sought to advance, while, to speake truth, Cromwell's personal courage and magnanimity upheld him against all enemies and malcontents." *Memoirs of Colonel Hutchinson*, (1810,) ii. 212.

* *Mercurius Fumigosus*, No. 60, mentions, "Sep. 5, 1655. The return of General Penn from the Indies; he coming into Portsmouth with twenty-four sail of ships."

† See vol. iii. pp. 102, 103, *note*. In "The secret Discoveries, which Don Fennyn, a Spanish Secretary, made to the Duke of Buckingham, 1623, at Madrid," this island is thus described:

"Jamaica commands all the Gulph of Mexico, and all the fleets which do come from the main land must pass in sight of it. The same abounds in all necessaries, and doth enjoy a very excellent air. It is able to maintain a million of inhabitants. There are about 3 or 4000 slaves. It hath an excessive number of horses, of beavers, and of boars.

"It is 50 leagues in length, and 25 in breadth at the most: and hath not above 7 or 800 men that bear arms; all which are seated in three small open towns, without any defence at all, viz. Seville, Oriestan, and Mellila. Most of them are Portugalls, who, as well as the negroes, long for nothing so much as to be freed from the Spanish yoke. The surprisal of the said isle is very easy, for that it is not fortified, and that the inhabitants are not trained up to arms.

"The secret golden mine, which hath not yet been opened by the King of Spain, or by any other, is four miles from Niestan, towards the east. It is near the way towards Mellila. The earth is black. Rivulets discover the source of the mine." See "Clarendon State Papers," (1767,) i. 19.

Navarre;" or rather, those who governed in the name of the royal minor, and "the Most Serene and Potent Protector of the Republic of England, Scotland, and Ireland."* To England was dispatched "the Lord de Bordeaux, Lord Ambassador;" and the Protector "deputed Commissioners, (Nathaniel Fiennes and Walter Strickland,) for so holy a work;" which was "done at Westminster, the third of November, 1655."†

* See *infra*, p. 40; vol. iii. pp. 314, 388—390.

"Some modern politicians," says Bishop Warburton, on Lord Clarendon, "have affected to think contemptuously of Cromwell's capacity, as if he knew not that true policy required that he should have thrown himself into the lighter balance, which was that of Spain, or as if he did not know which was become the lighter.

"But this is talking as if Cromwell had been a legal hereditary monarch, whom true policy would have thus directed. But true policy required that the usurper should first take care of himself, before he busied himself in adjusting the balance of Europe.

"Now France, by its vicinity, was the most dangerous power to disoblige, as well as by the near relationship of the two royal families of France and England. So that, though Cromwell gave out that which of the two states would give most for his friendship should have it, in order to raise the price, he was certainly determined in himself that France should have it." *History of Rebellion*, (1826,) vii. 640.

† "That there be no room hereafter for suspicion, the Ambassador of the King of France and Navarre engages and promises, in the name of his most Christian Majesty, to the Lord Protector of the Republic of England, Scotland, and Ireland, that the persons whose names are mentioned in the list hereunto annexed, and subscribed by the Lords Commissioners, shall not stay, neither they, nor any one of them, in the kingdom of France, beyond 40 days after the exchange of the ratifications of the treaty signed this day; nor shall they, or any one of them, return, or at any time hereafter be admitted into the said kingdom.

"Those to be banished out of France, were Charles, eldest son of Charles, late King of England, James Duke of York, Henry Duke of Gloucester, after ten years, if required. The Lord of Ormond, Sir Edward Hyde, Sir John Culpeper, Lord Gerrard, Daniel O'Neale, Lord Wilmot, Sir Marmaduke Langdale, Sir Edward Nicholas, Lord Wentworth, eldest son of the Earl of Cleveland, Sir Richard Greenville, Sir Francis Doddington, Sir John Berkeley, the Lord Bellasis, O'Sullivan Beare, Lieutenant-general Middleton, Lord Muskerie, the father, Major-general Edward Massey." *Treaties*, (1732,) pp. 160, 161.

Of the amicable tendencies, which issued in this alliance, the Protector had availed himself, in May this year, in favour of the foreign Protestants.* Afterwards, in the secret articles of the treaty, he patronized, in a manner probably without example, the interests of the reformed in France; even making the English nation a guarantee for the freedom of their public worship.†

* See vol. ii. p. 354.

† "*Art.* VI. Qu'en toutes les villes et bourgs de ce royaume, où il y aura des havres et des ports, la nation Angloise y aura commerce, et y pourra faire bastir des temples pour l'exercise de la religion, et sera permis aux François de la religion, qui y seront aux environs d'y faire prescher en François.

"*Art.* VII. Que les édits de Janvier et de Nantes, seront executez, selon leurs formes et teneurs, et toute le nation Angloise demeurera caution pour l'exécution des dits édits." See "Articles du Traité d'entre la France et L'Angleterre, fait par le Cardinal Mazarine et Cromwell;" in Charles Davenant's "Essays upon the Balance of Power," (1701,) pp. 13, 125.

The Edict of Nantes, 1598, is well known. The Ediet of January designs, I apprehend, the "Declaration du Roy, et confirmation de l'Edit de Nantes. Donné à Paris, le 15 Decembre, 1612; et verifié le 2 Janvier, 1613." See "Recueil des Edicts et Declarations des Roys Henry IV. Lovys XIII. et Lovis XIV. Sur la Pacification des Troubles de ce Royaume." *A Paris,* (1669,) *Avec Privilege de sa Majesté,* p. 88.

I am here reminded how Professor Limborch relates "a noble instance, given by Oliver Cromwell, Protector of England," of interference with the "unrighteous practices" of the Holy Office.

"Thomas Maynard, Consul of the English nation at Lisbon, was thrown into the prison of the Inquisition, under pretence that he had said or done something against the Roman religion. Mr. Meadows, who was then resident, and took care of the English affairs at Lisbon, advised Cromwell of the affair; and after having received an express from him, went to the King of Portugal, and, in the name of Cromwell, demanded the liberty of Consul Maynard. The King told him, it was not in his power: that the Consul was detained by the Inquisition, over which he had no authority.

"The Resident sent this answer to Cromwell, and having soon after received new instructions from him, had again audience of the King, and told him, that since his Majesty had declared he had no power over the Inquisition, he was commanded by Cromwell to declare war against the Inquisition. This unexpected declaration so terrified the King and the

At home, to detect and depress the impugners of his authority, and especially to weaken their influence by sequestrations of their property, the Protector divided England into twelve districts, and added a district for South Wales. Over these he placed major-generals, ruling a Committee in each district, with uncontrolled authority.* For this measure he has been generally censured. The conduct of these irresponsible officers became, indeed, so obnoxious, that in a few months he revoked their appointment.†

Inquisition, that they immediately determined to free the Consul from prison, and immediately opened the prison doors, and gave him leave to go out. The Consul refused to accept a private dismission, but, in order to repair the honour of his character, demanded to be honourably brought forth by the Inquisition. This story was well known to all foreign merchants, who lived at that time, and many years after, at Lisbon." See "The History of the Inquisition," (1731,) i. 214.

* See *infra*, p. 235, *note*. "He divided England," says *Ludlow*, "into cantons, over which he placed a Bashaw, under the title of Major-general, who was to have the inspection and government of inferior commissions in every county, with orders to seize the persons, and distrain the estates of such as shall be refractory, and to put in execution such further directions as they should receive from him." *Memoirs*, ii. 519.

Ludlow mentions "a farmer in Barkshire, who being demanded to pay his tenth, desired to know of the Commissioners, in case he did so, what security he should have for the other nine parts. And answer being made that he should have Cromwell's order and theirs for the enjoyment of the rest, he replied: 'If Goodman such an one,' and another whom he named of his neighbours, 'will give me their bond for it, I know what to say to such a proposal; for if they break their agreement, I know where to right myself, but these sword-men are too strong for me.'" *Ibid.* pp. 559, 560.

"These Major-generals," says Mrs. Hutchinson, "rul'd according to their wills, by no law, but what seem'd good in their owne eies; imprisoning men, obstructing the course of justice betweene man and man, perverting right, through partiality, acquitting some that were guilty, and punishing some that were innocent, as guilty." *Memoirs of Colonel Hutchinson*, (1810,) ii. 210.

† See vol. iii. p. 527, *note*. To Lord Clarendon's assertion, that this rigorous measure "brought a vast incredible sum of money into Cromwell's coffers," Bishop Warburton replies:—

"This is absolutely false, as appears by the letters of the several

It appears, that in this year, there was a "petition of divers counties, humbly to desire his Highness to accept the title and exercise the power of a king."* Bishop Burnet relates, on the authority of one of Cromwell's courtiers, a very different proposal, even a premature project for the restoration of the Stuarts.†

Amidst anxieties thus inseparable from a usurped sovereignty, exacting general acquiescence, but ill-supported by general approval; and to which Royalists, whose power he had subdued, and Republicans,‡ whose interests he had be-

Major-generals to Cromwell, in the collection of Thurloe's Papers, whereby it appears, that the money raised by decimation, did, at most, only support those new-raised troops, which the Major-generals raised in their several districts, to enable them to put their authority in execution." *History of Rebellion*, (1826,) vii. 640.

* *Mercurius Fumigosus*, (Aug. 8, 1655,) p. 500.

† "The Earl of Orrery [Lord Broghill, see *infra*, p. 357, *ad fin.*] told me," says the bishop, "that coming one day to Cromwell, and telling him that he had been in the city all that day, Cromwell asked him, what news he had heard there. The other answered, that he was told, he was in treaty with the King, who was to be restored, and to marry his daughter.

"Cromwell expressing no indignation at this, Lord Orrery said, in the state to which things were brought, he saw not a better expedient. They might bring him in, on what terms they pleased, and Cromwell might retain the same authority he then had, with less trouble. Cromwell answered, 'the King can never forgive his father's blood.' Orrery said, 'he was one of many that were concerned in that, but he would be alone in the merit of restoring him.' Cromwell replied, 'he is so damnably debauched, he will undo us all;' and so turned to another discourse, without any emotion, which made Orrery conclude he had often thought of that expedient." *Own Time*, (1724,) i. 71, 72.

Oldmixon relates this story more at large, "as told by Lord Broghill's chaplain," and adds, on the Protector's character of Charles Stuart; "as debauched as he was, I have heard him a hundred times called 'our most religious and gracious king,' in very sacred and solemn places." *House of Stuart*, (1730,) p. 113.

‡ *Ludlow* has recorded an interesting conversation with the Protector, about this time:

He "came to Westminster," from Ireland, with his family, "in the evening of the 10th of December." After relating an interview with "Lieutenant-general Fleetwood," he thus proceeds:—

"The

trayed, were equally disinclined; the Protector did not fail to recommend his administration, by acts of liberal and enlightened policy. Thus, he was desirous of conceding to the Jews, the equal rights of citizens,* while he availed himself

"The next Wednesday after my arrival, about eight in the evening, Cromwell sent a gentleman, one Mr. Fenwick, to let me know that he would speak with me. I found him in his bed-chamber, at Whitehall, and with him, Major-general Lambert, Colonel Sydenham, Mr. Walter Strickland, Colonel Montague, and soon after came in Lieutenant-general Fleetwood. The first salute I received from him was, to tell me, that I had not dealt fairly with him, in making him to believe that I had signed an engagement not to act against him, and yet reserving an explanation, whereby I made void that engagement.

"He asked me, wherefore I would not engage not to act against the present Government, telling me, that if Nero were in power, it would be my duty to submit. To which I replied, that I was ready to submit, and could truly say, that I knew not of any design against him. 'But,' said I, 'if Providence open a way, and give an opportunity of appearing in behalf of the people, I cannot consent to tie my own hands beforehand, and oblige myself not to lay hold on it.'—'However,' said he, 'it is not reasonable to suffer one that I distrust to come within my house, till he assure me he will do me no mischief.' I told him, I was not accustomed to go to any house, unless I expected to be welcome; neither had I come hither, but upon a message from him; and that I desired nothing but a little liberty to breathe in the air, to which I conceived I had an equal right with other men.

"Then beginning to carry himself more calmly, he said, that he had been always ready to do me what good offices he could, and that he wished me as well as he did any one of his Council; desiring me to make choice of some place to be in, where I might have good air.

"I assured him that my dissatisfactions were not grounded upon any animosity against his person; and that if my own father were alive, and in his place, they would, I doubted not, be altogether as great. He acknowledged that I had always carried myself fairly and openly to him, and protested that he had never given me just cause to act otherwise.

"When Cromwell had finished his discourse, some of those who were present, began to make their observations, and particularly Colonel Montague [See vol. iv. pp. 432, 433, *note*,] thought it worthy his notice, that I had intimated, if Providence should offer an occasion, I was ready to act against the present Government; but the rest of the company seemed ashamed of what he said." *Memoirs*, ii. 551, 552.

* See *infra*, p. 309; vol. iii. p. 479, *notes*. "Major-general Whalley" thus writes "to Secretary Thurloe. Nottingham, Dec. 12, 1655.

"I

of their commercial resources, and of their well-known facilities for continental intelligence.* He also assembled a council of merchants, "to consider how to improve, order, and regulate, the trade and navigation of the Commonwealth."†

Restraints on the press, that chief guardian of freedom, and the detector of despotism, under every disguise, had been disgracefully sanctioned by the Long Parliament, "deaf

"I am glad so godly and prudent a course is taken concerning the Jews; yet cannot conceive the reason, why so great a variety of opinion should be amongst such men, as I hear are called to consult about them. It seems to me, that there are both politique and divine reasons, which strongly make for their admission into a cohabitation and civil commerce with us. Doubtless, to say no more, they will bring in much wealth into this Commonwealth." See "Thurloe State Papers," iv. 308.

"Secretary Thurloe to H. Cromwell, Major-General of the army in Ireland.

"We have had many disputations concerninge the admittance of the Jewes to dwell in this Commonwealth, they havinge made an earnest desire to his Highnesse to be admitted; whereupon he hath beene pleased to advise with some of the judges, merchants, and divines.

"The point of conscience hath beene only controverted yet, viz. whether it be lawefull to admit the Jewes, now out of England, to return again into it. The divines doe very much differ in their judgments about it, some beinge for their admittance upon fitting cautions, others are in expresse termes against it, upon any termes whatsoever. The like difference I finde in the counsell, and soe amongst all Christians abroad.

"The matter is debated with great candor and ingenuitye, and without any heat. What the issue thereof will be, I am not able to tell you; but am apt to thinke that nothing will be done therein." *Ibid.* p. 321.

* "When he understood," says *Bishop Burnet*, "what dealers the Jews were every where, in that trade which depends on news, the advancing money upon high or low interests, in proportion to the risque they run, or the gain to be made, as the times might turn, and in the buying and selling of the actions of money so advanced, he, more upon that account, than in compliance with the principles of toleration, [a mere assertion,] brought a company of them over to England, and gave them leave to build a synagogue." *Own Time* (1724), i. 71.

† *Whitlock.* "This was a business," he adds, "of much importance to the Commonwealth, and the Protector was earnestly set upon it." *Memorials*, p. 618.

to the voice of the charmer," in the *Areopagitica* of Milton. These restraints still continued, and were too often enforced by the Protector, to preclude the agitation of political questions;* though he is said, in some happy moment of just and liberal feeling, to have uttered the generous sentiment, that if his Government would not stand against paper-shot it was not worthy of preservation. Yet he was disposed, with few, if any exceptions, to rescue the victims of religious intolerance out of the power of their oppressors;† whether these

* "October, 1655. The Council at Whitehall ordered, that no person presume to publish in print, any matter of public news or intelligence, without leave and approbation of the Secretary of State.—Order of the Protector and Council against printing unlicensed and scandalous books and pamphlets, and for regulating of printing." *Ibid.* p. 617.

A diurnal of this time complains how "The *single-sheeted incendiaries* walk now in state," and the instance given is a pamphlet, intitled: "Some Mementos for the Officers and Soldiers of the Army, from some Sober Christians." Among many passages quoted, is the following:

"Before this Parliament had sat nine days, his Highness commanded part of the militia to lock up the Parliament doors against the Parliament, and hath sent away such members, as will not betray the cause of their country into his hands."

Another of the "Mementos," discovers how he "broke in pieces the Parliament that intrusted him with his command, under a false pretence that they would have sat for ever;" though "they were, at that instant, passing an Act for dissolving themselves and settling successive Parliaments; but the Protector broke them, in haste, to prevent the passing that Act, which had otherwise passed within an hour."

To controvert this statement, the courtly diurnal adds: "sure they had no mind to rise, as you may read in his Highness's speech to the Parliament." This, no doubt, in 1654, was a conclusive argument. "The master has said it." See *Observator*, (1654,) No. 2. pp. 14, 28, 29.

† This disposition the Protector now discovered, by interfering to rescue from the penalties of an unrighteous Ordinance (see vol. iii. p. 208, *note* *) a learned and exemplary Christian professor, who had largely experienced the bigotry and intolerance of the late Parliament (see *supra*, p. cxxx.) From the following article of intelligence, it appears that his Christian persecutors had not relaxed in their efforts for his destruction:

"The Diurnal Newes, July 11—18, 1655. The Tryall of Mr. John Biddle, at the Sessions in the Old Baily, for seeking to divide the Deitie, being try'd upon the Ordinance made in 1648, against blasphemy and heresie." *Mercurius Fumigosus*, No. 60, p. 468. See *infra*. p. 57, *note*.

were the misguided Independents, violating their own sacred principle, that the profession of religion is a concern strictly personal; or those more consistent persecutors, the Presbyterians, who, according to one who could well describe them, were only "priests writ large."

Though, at the commencement of the year 1656, the Protector had further success against the Spaniards,* yet his project of drawing from the New World pecuniary resources for the support of his government,† appears to have entirely failed. Thus he was at length constrained again to encounter the animadversions of a Parliament.‡

* *Whitlock* mentions: "Jan. 1655-6, Letter of a gallant action performed by the English in Jamaica, against the Spaniards in the Indies." *Memorials*, p. 619.

† "Gage, who had been a priest," says Bishop Burnet, "came over from the West Indies, and gave such an account of the feebleness, as well as the wealth of the Spaniards in those parts, as made him conclude, that it would be both a great and an easy conquest to seize on their dominions. By this he reckoned he would be supplied with such a treasure, that his government would be established, before he should need to have any recourse to a Parliament for money.

"He equipped a fleet with a force sufficient, as he hoped, to have seized Hispaniola and Cuba. And Gage had assured him that success in that expedition would make all the rest fall into his hands.

"Stoupe [see vol. ii. p. 354 *note*] being, on another occasion, called to his closet, saw him, one day, very intent in looking on a map, and in measuring distances. Stoupe saw it was a map of the Bay of Mexico, and observed who printed it. So, there being no discourse upon that subject, Stoupe went next day to the printer to buy the map. The printer denied he had printed it. Stoupe affirmed he had seen it. Then, he said, it must be only in Cromwell's hand; for he only had some of the prints, and had given him a strict charge to sell none, till he had leave given him. So Stoupe perceived that there was a design that way." *Own Time*, (1724,) i. 74, 75.

Whitlock says: "Many were very eager to engage in this design; but it was kept very secret, till the fleet had been gone a long time." *Memorials*, p. 602.

‡ "Whitehall, July 10. This day, the writs for summoning the Parliament, were sealed before the Lords Commissioners of the Great Seal, and from this day they bear date; so that the time of electing fit persons to serve in Parliament, being, (according to the tenor of the Government,) to be the Wednesday five weeks after the date of the writs;

Wednesday, Sept. 17, 1656. His Highness the Lord Protector, attended by the Lord President and the rest of his Highness's Council, and other officers of state, came to the

the general day of election will fall out to be on Wednesday, the 20th of August. The Parliament is to assemble on the 17th of September following." See *Public Intelligencer*, No. 40, p. 690. See also *Mercurius Politicus*.

"July 10," says *Whitlock*, "the Lords Commissioners of the Great Seal, sitting at the Temple, sealed the writs of summons for a Parliament, to meet the 17th of September." *Memorials*, (1732,) p. 649.

"The Protector, by warrant to Sir John Barkstead, Lieutenant of the Tower, discharged Mrs. Lucy Barlow from imprisonment. She had a young son with her, which she publicly declared to be King Charles's son, and that she was his wife.

"The officers found a grant, when she was apprehended, signed Charles R., by which she had an annuity, or yearly pension of 5000 livres, granted to her for her life, with an assurance to better the same, when it should please God to restore him to his kingdoms; and it was subscribed, by his Majesty's command, 'Edward Nicholas.'" *Ibid.* See Dr. Harris's *Lives*, (1814,) iv. 162—168.

Mr. Evelyn says, "Aug. 18, 1649. I went to St. Germain's to kisse his Majesty's hand. In the coach, which was my Lord Wilmot's, went Mrs. Barlow, the King's mistresse, and mother to the Duke of Monmouth, a browne, beautiful, bold, but insipid creature." *Diary*, (1827,) ii. 11.

A few pages later, Mr. Evelyn describes, and probably had witnessed, a representation on Christmas Day, which seems to have been not ill got up, for stage effect. "The King" performs the principal character. It does not appear that "the King's mistresse" sustained any part, and what "the Lords" were acting, I am at a loss to determine, being unacquainted with the ceremonial by which princes are distinguished from plebeians, when receiving the Sacrament:—

"Dec. 25, 1651. The King and Duke received the sacrament, first by themselves, the Lords Biron and Wilmot holding the long towell, all along the altar." *Ibid.* p. 45; see vol. iii. p. 273, *ad fin.*

Whitlock has recorded the following occupations of Cromwell and his Court, during this interval, before the assembling of the Parliament:—

"July 25. The Swedish Ambassador, having taken his leave of the Protector, received great civilities and respects from him, and afterwards dined with him, at Hampton Court, and hunted with him. The Protector bestowed the dignity of knighthood upon one of his gentlemen, Sir Gustavus Du Vale, the Mareschal.

"August 12. The Ambassador of Sweden dined at Sir George Ays-

Abbey Church in Westminster; where, also, the members of Parliament met, and heard a sermon preached by Dr. Owen, dean of Christ Church, and Vice-chancellor of the University

cough's house, in Surrey, where they had very noble entertainment. The house stands environed with ponds, motes, and water, like a ship at sea, a fancy the fitter for the master's humour, who is himself so great a seaman. There, he said, he had cast anchor, and intended to spend the rest of his life in a private retirement.

"The Ambassador, understanding the abilities of Sir George in sea affairs, did (according to his custom) endeavour to improve his own knowledge, by his discourses and questions to the company, according to their several capacities and abilities. They had much discourse of this nature, which added pleasure to the entertainment.

"In his return home, the ambassador went into Hampton Court to take his leave of the Lady Elizabeth Cleypole and her sisters, where he was received with much state.

"20. The Swedish Ambassador designed to have gone away this day, but his jewel, and other present of 1200*l.* worth of white cloth, not being ready, he was well contented to stay for them. And they were now resolved to be bestowed on him, since the news of his master's great victory against the King of Poland.

"23. The Ambassador, having been yesterday to take his last leave of the Protector, was this day to go to Gravesend, and the Lord Strickland and Sir Gilbert Pickering, were appointed by the Council to accompany the Ambassador to the water-side. The Protector's coaches, and many other coaches, were appointed to conduct him in state to the Tower wharf, where the Protector's barges were attending upon him.

"The Ambassador wore the rich jewel which the Protector gave him, tied with a blue ribbon to his button holes. The jewel was his Highness's picture in a case of gold, about the bigness of a five shillings' piece of silver, set round the case with 16 fair diamonds, each diamond valued at 60*l.* in all about 1000*l.*

"September 3. The Protector and his Council kept a solemn day of thanksgiving for the two victories obtained at Dunbar and Worcester, on this day of the month." *Memorials*, pp. 649, 650.

In an "advertisement of several books now published," about this time, is the following title-page, remarkable, as London was burned in 1666; and unfortunate for the author's discernment, as the end of the world has not yet arrived. It is Calvin, I think, who says, very sensibly, that the scriptural prophecies were not designed to make prophets.

"*Romæ Ruina finalis, Anno Dom.* 1666. *Mundique finis sub Quadragesimum quintum post Annum*; or a Treatise wherein is declared, that Babylon in the Revelation is Pontificiall Rome, and the Pope Antichrist;

of Oxford;* and from thence his Highness came to the Painted Chamber, where most of the members of Parliament were present: to whom his Highness communicated the occasion of calling this present Parliament.†

The Protector's Speech, the 17th of September, 1656, at the opening of the Parliament.‡

Gentlemen,

When I came hither, I did think that a duty was incumbent upon me, a little to pity myself, because, (this being a very extraordinary occasion) I thought I had very many things to say to you; but truly now, seeing you in such a condition as you are, I think I must turn off in this, as I hope I shall in every thing else, and reflect upon, as certainly not being able long to bear that condition and heat that you are in.

Rhetoricians, to whom I do not pretend; neither to them, nor to the things they use to speak, words. Truly, our business is to speak things. The dispensations of God that are upon us do require it, and that subject upon which we shall make our discourse, is somewhat of very great interest and concernment, both the glory of God, and with reference to his interest in the world. I mean his peculiar, his most peculiar

and that Rome will be utterly destroyed, and laid in ashes, in the year 1666. Sold by S. Thomson, at the White Horse in Paul's Church-yard, and John Shirley, at the Pelican in Little Britain." *Mercurius Politicus* ("July 17 to July 24, 1656,") No. 319.

* From *Isaiah*, xiv. 32. *Parl. Hist.* xxi. 23.

† *Journals*. This Speech is now printed, most probably, for the first time. I have copied it from the *MS.* collection described *infra*, p. 370, *ad fin.* The following is the result of an earlier enquiry.

"Upon the strictest search, we have not been able to meet with Cromwell's speech, at the opening of this Parliament; nor is there the least sketch of it in the Journals of the House, the diaries, or the contemporary writers. From hence, we are inclined to think that, for reasons of state, it was never printed." *Parl. Hist.* (1760,) xxi. 24.

‡ There will be found in this speech, besides a few blanks, some sentences scarcely intelligible, perhaps from omissions in the *MS.*

interest, and that will not leave any of us to exclude his general interest, which is the concernment of the living people within these three nations, with all the dependencies thereupon.

I told you I should speak to things, things that concern these interests, the glory of God and his peculiar interest in the world, which is more extensive, I say more extensive, than the people of all these three nations, with the appurtenances, or the countries and places belonging unto them.

The first thing, therefore, that I shall speak to, is, that that is the first lesson of nature, which is being and preservation. As to that of being, I do think I do not ill style it the first consideration that nature teacheth the sons of Adam, and then I hope we shall enter into a field large enough, when we come to consider that well-being; and if that first be not well laid, I think the rest will hardly follow.

Now, in order to this, to the being and subsistence of these nations, with all the dependencies; the conservation of that is either with a respect to be had to them that seek to undo it, and so make it not to be, and then with a very natural consideration to what will make it to be, will keep its being and its subsistence.

That which plainly seeks the destruction of the being of these nations, is out of doubt the endeavour and design of all the common enemies of them. I think truely it will not be hard to find out who those enemies are, nor what hath made them so. I think they are all the wicked men of the world, whether abroad or at home, that are the enemies to the very being of these nations, and that upon a common account, from that very enmity that is in them. Yet, whatsoever should serve the glory of God, and the interest of his people, which they see to be more eminently, yea more eminently patronized and professed in this nation, (we will not speak it with vanity) above all the nations in the world; this is the common ground of the common enmity had against the prosperity of these nations, against the very being of them. But we shall not, I think, take up much time in contemplating who these enemies are; what they are,

in the general notion; but labour to specificate our enemies, to know who they be, and are, that seek the very destruction and being of these nations.

And, truly, I would not have laid this foundation but to this end, that I might very particularly communicate with you; for which end you are called hither at this time, that I might particularly communicate with you, of the many dangers that these nations stand in, in respect of enemies, both abroad and at home, and also to advise with you about the remedies and means to obviate these dangers; which, say I, (and I shall leave it to you whether you will join with me or no,) strike at the very being and interest of these nations. And, therefore, that I may be particular, I shall shortly represent to you the estate of your affairs in that respect, in respect of the enemies you are engaged with, and how you come to be engaged with those enemies, and how they came to be, as heartily, (I believe,) engaged against you.

Why, truly, your great enemy is the Spaniard. He is a natural enemy, he is naturally so, he is naturally so throughout, through that enmity that is in him against all that is of God, that is in you, or that which may be in you, contrary to that that his blindness and darkness, led on by superstition, and the implicitness of his faith (in submitting to the See of Rome) acts him unto.

With this King and State, I say, you are at this present in hostility. We put you into this hostility. You will give us leave to tell you how. As we are ready to excuse most of our actions, (and to justify them as well, too, as excuse them) upon the grounds of necessity; the grounds of necessity being, of justification, above all considerations of instituted law, and if this or any other state would go about (as I know they never will) to make laws against what may happen, against Providence, I think it is obvious to any man, that they will make laws against all events; events and issues of things being from God alone, to whom all issues belong.

This State is your enemy, and is your enemy (as I told you) naturally, by that antipathy that is in him providentially, and that in divers respects. You could not have an honest or

honourable peace with him. It was sought by the Long Parliament.* It was not attained. It could not be attained with honour and honesty. I say, it could not be attained with honour and honesty. And truly, when I say that, he is naturally throughout an enemy, an enmity is put into him by God. "I will put an enmity between thy seed and her seed"†—which goes but for little among statesmen, but is more considerable than all things. And he that considers not the providential and accidental enmity, I think he is not well acquainted with Scripture and the things of God. And he is not only so (upon that account), but he is providentially so, God having in his wisdom disposed it to be so, when we made a breach with him.

No sooner did this nation form that which is called, unworthily, the Reformed Religion, after the death of Queen Mary, by the Queen Elizabeth of famous memory, (we need not be ashamed to say so,) but his designs were, by all unworthy, unnatural means, to destroy that person, and to seek the ruin and destruction of these kingdoms; and for me to instance in particular upon that account, were to trouble you at a very unseasonable time. There is a declaration extant, which very fully hath in it the original of the Spaniard's setting him upon this nation, and a series of it, from those very grounds to this present day. But it was so partly upon that general account which all have agreed, the French, all the Protestants in Germany have agreed, that his design was the empire of the whole Christian world, if not more, and upon that ground he looks at this nation as his greatest obstacle. And what his attempts were to that end, I refer you to that declaration, and to the observations of men who read history. It would not be ill to remember the several assassinations designed upon that lady, that great Queen; the attempts upon Ireland, their invading it, the designs of the same nature upon this nation, public designs, private designs,

* Bishop Burnet says: "Spain would never admit of a peace with England, between the tropicks." *Own Time*, i. 74.

† *Gen.* iii. 15.

all manner of designs to accomplish this great and general end.

Truly, King James made a peace, but whether this nation, any interest of all the Protestant Christians suffered not more by that peace, than ever by its hostility, I refer it to your consideration. So that a State that you can neither have peace with, or reason from, is that State with whom you have enmity at this time, and against whom you are engaged. And give me leave to say this unto you, because it is truth and most men know it, that the Long Parliament did endeavour, but could not obtain satisfaction all the time they sate; for their messenger was murthered,* and when they asked satisfaction for the blood of your poor people unjustly shed in the West Indies, and for the wrongs done elsewhere; when they asked liberty of conscience for your people that traded thither; satisfaction would not be given, but denied. I say, they denied satisfaction to be given, either for your messenger that was murthered, or the blood that was shed, or the damages that were done, in the West Indies; no satisfaction at all, nor any reason given, why there should not be liberty given to your people that traded thither, whose trade was very considerable there, and drew many of your people thither, and begot an apprehension in us; whether in you or no, let God judge between you and himself. I judge not, but all of us know that the people that went thither to manage the trade there, were imprisoned. We desired such a liberty, as they might keep Bibles in their pockets to exercise their liberty of religion to themselves, and not to be under restraint. But there is not liberty of conscience to be had, neither satisfaction for injuries, nor for blood. When these things were desired, the ambassador told us it was to ask his master's two eyes, to ask both his eyes, to ask these things of him.

Now, if this be so, why truly then here is some little foundation laid to justify the war that was had with the Spaniard. And not only so, but the plain truth of it is; make any peace with any State that is Popish, and subjected to the

* Ascham, in 1650.

determination of Rome, and the Pope himself; you are bound and they are loose. It is in the pleasure of the Pope at any time to tell you, that though the man may be murthered, yet he has got into the sanctuary. And it is as true, and it hath been found by common and constant experience, that peace is but to be kept, so long as the Pope saith amen to it.

We have not to do with any Popish State except France, and it is true that they do not think themselves under such a tie to the Pope;* but think themselves at liberty to perform honesties with nations with whom they are agreed, and protest against the obligation of such a thing as that is. They are able to give us an explicit answer to any thing reasonably demanded of them; and there is no State we can speak of (save this which is under the lash of the Pope to be determined) but will break it or keep it, when they please, upon these grounds.

In the time when Phillip II. was married to Queen Mary, and since that time, through that power and instigation 20,000 Protestants were massacred in Ireland. We thought, being denied just things, we thought it our duty to get that by the sword which we could not otherwise do. And this hath been the spirit of Englishmen, and, if so, certain it is, and ought to be, the spirit of men that have higher spirits.

With this State you are engaged, and it is a great and powerful State, though I may say, that, also, with all other States, with all other Christian States you are at peace. All these engagements were upon you before this Government was undertaken; war with France, Denmark, and, upon the matter, war with Spain. I could instance how it was said, we will have a war in the Indies, though we fight them not at home. I say, we are at peace with all other nations, and have only a war with Spain. I shall say somewhat to you that will let you see our clearness to that, by and by.

Having thus engaged with Spain, it is that party that brings all your enemies before you. It doth, for it is so

* Asserting the liberties of the Gallican Church.

now, that Spain hath espoused that interest, that you have all along hitherto been conflicting with, Charles Stuart's interest. And I would but meet that General upon a fair discourse, that is willing that that person should come back again, but I dare not believe any in this room is.* I say, it doth not detract at all from your cause, nor yet from your ability to make resistance, that God by his Providence hath so disposed, that the King of Spain hath espoused that person. I say, no person but would be wonderfully well satisfied, that it is not for the aversion of that person, and choosing out (as was said to-day,†) a captain to lead us back again into Egypt, if there be such a place, I mean metaphorically and allegorically so, that is to say, returning to all those things that we have been fighting against, and destroying of all that good, (we have had some hints to-day,†) we have attained unto. I am sure my speech will signify very little, if such grounds go not for good; and I must say this to you, that there is not a man in England, that is apt to comply with Papists and Cavaliers, but to them it is the greatest parable and absurdest discourse. And therefore we could wish they were all where Charles Stuart is, all that declare that they are of that spirit. I do, with all my heart, and I would help them with a boat to carry them over, that are of that mind. Yea, and if you shall think it a duty to drive them over by arms, I will help in that also.

You are engaged with this enemy, and this last said hath a little vehemency in it, but it is worth your consideration. Though I seem to be all this while upon the justice of this business; yet my desire is to let you see the dangers that this nation stands in, all the honest interests, yea all interests of the Protestants in Germany, Denmark, Helvetia, and the Cantons, and all the interests in Christendom are the same as yours. If you succeed, if you succeed well, and act well, and be convinced what is God's interest, and but prosecute it, you will find that you act for a very great many that are God's own. Therefore, I say, that as your danger is from the

* See vol. iii. p. 551, *note*. † In the sermon.

common enemy abroad, who is the head of the Papal interest, the head of the anti-Christian interest, that is so described in Scripture, so forespoken of, and so fully in that characteral name given him by the Apostle in his Epistle to the Thessalonians, and also expressed throughout the Revelations, which are sure plain things, except you will deny the truth of the Scriptures, you must needs see that that State is so described in Scripture to be Papal and anti-Christian. I say, with this enemy, and upon this account, you have the quarrel with the Spaniard.

And truly he hath an interest in your bowels, he hath so. The Papists in England, they have been accounted ever since I was born, Spaniolized. There is not a man amongst us can hold up a face against it. They never regarded France, they never regarded any other Popish state, where any interest was. Spain was their patron. It was so in England, Ireland and Scotland, no man can doubt of it. Therefore I must needs say, this interest at home is a great ——— of your danger. It is, and it is evidently so, and it will be more so, upon that account that I told you. He hath espoused Charles Stuart; with whom, he is fully at agreement, for whom he hath raised 7 or 8000 men, that are now quartered at Bruges, to whom Don John of Austria hath promised, as soon as the campaign is ended, which it is conceived will be in about five or six weeks, he shall have added 4 or 5000. And the Duke of Newburgh, who is a popish state, hath promised good assistance according to his power; and other popish states, the like.* In this condition you are with that state, and in this condition through unavoidable necessity; because your enemy was naturally so, and is become so, providentially.

* The Lord de Bordeaux to Cardinal Mazarine. "Sept. 28, 1656, SN. The Lord Protector very much enlarged himself against Spain; exaggerating all the enterprizes which the Spaniards had formerly attempted against England, and the motives which obliged him to break with that nation. He also seemed to be persuaded, that his Catholic Majesty and the Duke of Newburgh, had engaged to furnish the King with 9000 men, to be transported into England." See "Thurloe State Papers," v. 427.

This being so, that as there is a complication of these interests, so there is a complication here. Can we think that Papists and Cavaliers shake not hands in England. It is unworthy, un-Christian, un-English-like. Therefore, I say, it doth serve to let you see, and for that end I tell it you, to let you see your danger, and the rise of it. It is not only thus, that we stand in this condition towards Spain, towards all that interest, (that would make void and frustrate all that are doing for you,) in respect of the popish interest, Papists and Cavaliers, but it is also, that is to say, your danger is so great, if you be sensible of it, from persons that pretend other things; yea, who (though, perhaps, they do not all suit in their hearts with the said interest) yet all men know, and must know, that discontented spirits are somewhere. They must expect back and support somewhere. They must end at the interest of the Cavalier at the long run. That must be their support. I could have reckoned this upon other, but I shall give you an account of things as they appear to be, for that I desire to clear them to you, not discoursively, but to let you see matter-of-fact, and to let you see how the state of your affairs stands.

It is true, there was, not long since, an endeavour to make an insurrection in England. It was so for some time before it broke out. It was so before the last Parliament sat. It was so from the time, not only of the undertaking of this government, but the spirit and principle of it did work in the Long Parliament. From that time to this hath there been nothing but enterprizing and designing against you, and it is no strange nor new thing to tell you, because it is true and certain, that the Papists, the Priests and Jesuits, have a great influence upon the Cavalier party. They, and the Cavaliers, prevail upon discontented spirits of the nation, who are not all so apt to see where dangers lie, nor to what the management of affairs tends. Those do foment all things that tend to disservice, to propagate discontentments upon the minds of men. And if we would instance in particulars, those that have manifested this, we could tell you that Priests and Jesuits have insinuated themselves into the society of men, pretending the same things that they have pretended, and

whose ends have been that (out of doubt) which I have told you.

We had that insurrection.* It was intended first to the assassination of my person, which I would not remember as any thing at all considerable to myself, or to you; for they must cut throats beyond human consideration before they had been able to effect their design. You know that very well. It is no fable; for persons were arraigned for it before the Parliament, and tried, and upon proof condemned, for their designs and endeavours to cut the throat of myself and three or four more, that they singled out, as being a little more than ordinary industrious to preserve the peace of the nation; and did think to make a very good issue, to the accomplishment of their designs. I say this was made good upon the trial. Before the Parliament sat, all the time the Parliament sat, they were about it. We did hint these things to them by several persons, that acquainted them therewith. But what fame we lay under I know not. It was conceived, it seems, we had things that rather intended to persuade agreement and consent, and monies out of the people's purses, or I know not what; but nothing was believed, though there was a series of these things, distinctly and plainly communicated to many members.

The Parliament rose about the middle of January.† By the 12th of March, after, they were in arms. But these were a company of mean fellows, (alas!) not a lord, nor a gentleman, nor a man of fortune, nor this, nor that amongst them; but it was a poor, headstrong people, a company of rash fellows, that were at the undertaking of this, and this was all; and by such things have men lost their consciences and honours, by complying upon such notions as these are.

Give me leave to tell you, we know it, we are able to prove it, and I refer you to that declaration which is for provision against Cavaliers, as I did you to those other that set down the ground of our war with Spain, whether these things were so, or no. If men will not believe, we are satisfied, we

* See *infra*, pp. 230, 231.

† Dissolved Jan. 22, 1654, 5. See *supra*, p. cxxxiii.

do our duty. If we let you know things, and the ground of them, it is satisfaction enough to us; but to see how men can reason themselves out of their honours and consciences, in their compliance with those sort of people, which truly I must needs say some men had compliance with, that I thought never would for all the world, I must tell you so.

These men rise in March, and that it was a general design, I think all the world must know and acknowledge; for it is as evident as the day that the King sent Sir Joseph Wagstaffe, and another, the Earl of Rochester,* to the North. And that it was general, we had not by suspicion and imagination, but we know individuals. We are able to make appear, that persons that carried themselves the most demurely and fairly of any men in England, were engaged in this business, and he that gave our instructions, lost his life for it, in ——— country, I think I may now speak of it, because he is dead; but he did discover, from time to time, a full intelligence of these things. Therefore, how men of wicked spirits may traduce us in that matter, or, notwithstanding all that hath been done, may still hold their compliances, I leave it. I think England cannot be safe, unless malignants be carried far away.

There was never any design, but we could hear of it out of the Tower. He that watched over that,† would give us an account, that within a fortnight, or such a thing, there would be some stirrings; for there was a great concourse of people came to them; and that they had very great elevations of spirit. It was not only there, but in all the counties of England. We have had informations, that they were upon designs all over, besides some particular places, which came to our particular assurance and knowledge we had from persons, in the several counties in England. And, if this be so, then as long as commotions can be held on foot, you are in danger by your war with Spain, with whom all the Papal interest is joined. This Pope‡ is a person all the world

* See *infra*, p. 231, *note* ‡.
† Sir John Barkstead. See vol. iii. p. 79, *note*.
‡ See vol. ii. p. 358, *note* ‡.

knows to be a person of zeal for his religion, (wherein he perhaps may shame us) and a man of contrivance, and wisdom, and policy, and his designs are known, all over, to be nothing else but endeavours to unite all the Popish interests, in all the Christian world, against this nation, above any, and against all the Protestant interest in the world.

If this be so, and if you will take a measure of these things, and we must still hold our esteem that we have had, and be ready to shake hands with them, and the Cavaliers; what doth this differ from the Bishop of Canterbury, to reconcile matters of religion, if this temper be upon us, to unite with these men in civil things. Give me leave to say, and speak what I know. If this be so, I tell you plainly, (I hope I need not,) I wish all the Cavaliers in England, and all the Papists heard me declare it, and many here besides yourselves, I tell you, there are a company of poor men, that are ready to spend their blood against such compliance, and I am persuaded the same things of you.

If this be our condition, with respect had to this, truly let us go a little farther, for I would lay open the danger, wherein I think in my conscience we stand, and if God give not your hearts to see and discern that which is obvious, we shall sink, and the house will fall about our ears, upon such sordid attempts as these are. Truly there are a great many people in this nation, that would not reckon up every pitiful thing, (that may be like a mouse nibbling at the heel,) but of considerable dangers. I will tell you plainly, for it is not time for compliments, nor rhetorical speeches. I have none, truly, but to tell you how we find things.

There is a generation of men in this nation, that cry up nothing but righteousness, and justice, and liberty, and these are diversified in several sects, and sorts of men, and though they may be contemptible, in respect they are many, and so not like to make a solid vow to do you mischief, yet they are apt to agree in *aliquo tertio* they are known, yea well enough to shake hands together, I should be loth to say with Cavaliers, but with all the scum and dirt of this nation, to put you to trouble. And, therefore, when I shall come to speak

to the remedies, I shall tell you, what are the most apt and proper remedies, in all these respects. I tell you, of the very time, when there was an insurrection at Salisbury, I doubt whether it be believed, whether ever there was any rising in North Wales, Shrewsbury, Rufford-Abby, where there was about five hundred horses, Marston-moor, Northumberland, &c. where all these insurrections were, at that very time. There was a party, which was very proper and apt to come between the Papists and cavaliers, and that Levelling party hath some access lately that goes under a finer name or notion. I think they would be called Commonwealth's men, who, perhaps, have reason little enough. And it is strange that men of fortune and great estates, should join with such a people; but if the fact be so, there needs no great reason to discover it to be so, it being so by demonstration.

I say, this people, at that very time, they were pretty numerous, (and do not despise them,) at that time the Cavaliers were risen, this very party had prepared a declaration against all the things that had been transacted, and called them I know not by what, tyranny, oppression, things against the liberty of the subject; and cried out for justice, and righteousness, and liberty; and what was all this business for, but to join with the Cavaliers, to carry on that design, and these are things, not words. That declaration we got, and the penner of it we got, and we have got intelligence also, how the business was laid and contrived, which was hatched in the time of the sitting of that Parliament. I do not accuse any body, but I say, that was the time of it, an unhappy time. And a plausible petition was penned, that must come to me, forsooth, to consider of these things, and to give redress and remedies; and this was so.

Now, indeed, I must tell you plainly, we suspected a great deal of violence then, and we did hunt it out. I will not tell you these are high things, but at that time that the Cavaliers were to rise, a party was to seize upon General Monk in Scotland, and to commit him to Edinburgh Castle, upon this pretence of liberty; and when they had seized upon him and clapped him by the heels, and some other true and faithful officers, they were resolved upon a number at the same time

to march away for London, and to leave a party behind them, to have their throats cut by the Scots. Though I will not say they would have done it, yet it cannot be thought otherwise, but that a considerable army would have followed them, at the heels. And not only thus, but this spirit and principle designed some little fiddling things, upon some of your officers, to an assassination, and an officer was engaged, that was upon the guard, to seize me in my bed. This was true. And other foolish designs there were, as to get in a room, to get gunpowder laid in it, and to blow up the room wherein I lay. And this, we can tell you, is true. These are persons not worthy naming, but the things are really true, and this is the state wherein we have stood, with which we have conflicted since the last Parliament. And upon this account, and in this combination, it is that I say to you, that the ringleaders to all this are none but your old enemies, the Papists and Cavaliers. We have some in prison for these things.

Now we would be loth to tell you of notions more seraphical. These are poor and low conceits. We have had very seraphical notions. We have had endeavours to deal, between two interests; one that was part of the Commonwealth's interest, and another that was a notion of a Fifth-Monarchy interest. Whom I do not repeat, whose condition I do not repeat, as thinking it not worthy our trouble; but, *de facto*, it hath been so. That there hath been endeavours, as there were endeavours to make a reconciliation between Herod and Pilate, that Christ might be put to death; so there hath been endeavours of reconciliation between the Fifth-Monarchy's and the Commonwealth's Men, that there might be union, in order to an end, no end being so bad as that of Herod's, but in order to end in blood and confusion, and that you may know I profess, I do not believe these two last, of Commonwealth's Men and Fifth-Monarchy Men, that have stood at a distance. I think they did not participate, I would be so charitable; I would be, that they did not. But this I will tell you, that for the other, they did not only set these things on work, but sent a fellow, a wretched creature, an apostate from religion

and all honesty, they sent him to Madrid, to advise with the King of Spain, to lend forces to invade this nation, promising satisfaction, if they would comply and concur with him to have both men and monies; undertaking both to engage the fleet to mutiny, and also your army to gain a garrison; to raise a party; that if the Spaniard would say where he would land, they would be ready to assist him.

This person was sometimes a colonel in the army. He went with letters to the Archduke Leopoldus and Don John. That was an ambassador, and gave promises of much monies, and came back again, and hath been soliciting, and did obtain monies, that he sent hither by bills of exchange; and God, by his providence, we being exceeding poor, directed that we lighted on some of them and some of the monies. Now, if they be payable, let them be called for. If the House shall think fit to order any, they may have an inspection into these things.

We think it our duty to tell you of these things, and we can make them good. Here is your danger, that is it; and here is a poor nation that hath wallowed in its blood, though, thanks be to God! we have had peace these four or five years. Yet here is the condition we stand in; and I think I should be false to you, if I should not give you this true representation of it.

I am to tell you, by the way, a word to justify a thing that I hear is much spoken of. When we knew all these designs before mentioned, when we found that the Cavaliers would not be quiet, no quiet there is, "no peace to the wicked," saith the Scripture, the 57th of Isaiah. "They are like the troubled sea that cannot rest, whose waters cast up mire and dirt." They cannot rest, they have no peace with God and Jesus Christ in the remission of sins. They do not know what belongs to it, therefore they know not how to be at rest; therefore they can no more cease from their actions, than they can cease to be, nor so easily neither.

Truly, when this insurrection was, and we saw it, in all the roots and grounds of it, we did find out a little poor invention, which I hear has been much regrated. I say,

there was a little thing invented, which was the erecting of your Major-generals,* to have a little inspection upon the people, thus divided, thus discontented, thus dissatisfied, in divers interests, by the Popish party, the Lord Taffe† and others, the most, consisting of natural Irish rebels, and all those men you have fought against in Ireland, and expulsed from thence, as having had a hand in that bloody massacre of those that were under his power who should have joined in this excellent business of insurrection.

And, upon such a rising as that was, truly, I think if ever any thing were justifiable to necessity, and honest in every respect, this was; and I could as soon venture my life with it, as any thing I ever undertook. We did find out, I mean myself and the Council, that if there were need, to have greater forces to carry on this work, it was a most righteous thing to put the charge upon that party, which was the cause of it, and if there be any man that hath a face looking averse to this, I dare pronounce him to be a man against the interest of England. Upon this account, and upon this ground of necessity, when we saw what game they were upon, and knew individual persons, and of the greatest rank, not a few, engaged in this business; (I knew one man that laid down his life for it, and by letters intercepted, which made it as clear as the day,) we did think it our duty to make them that were in the combination of men, as evident as any thing in the world, equally to bear their share of the charge; one with another, for the raising of the forces that were so necessary to defend us against those designs. And truly, if any man be angry at it, I am plain, and shall use an homely expression, let him turn the buckle of his girdle behind him. If this were to be done again, I would do it.

How the Major-generals have behaved themselves in that work. I hope they are men as to their persons of known integrity and fidelity, and men that have freely adventured their blood and lives, for that good cause, (if it be thought

* See *supra*, p. cxl.

† See Lord Clarendon's *History*, (1704,) ii. 159.

so, and it was well stated,* against all the humours and fancies of men). And, truly, England doth yet receive one day more of lengthening out its tranquillity by that occasion.

Well, your danger is, as you have seen, and truly I am sorry it is so great. I wish it might cause no despondency, as truly I think it will not, because we are Englishmen; that is one good account. And if God give a nation propriety of valour and courage, it is honour and mercy, and much more because you all (I hope) are Christian men, that know Jesus Christ, and know that cause that hath been mentioned to you this day.

Having declared to you my sense and my knowledge; pardon me, if I say so, my knowledge of the condition of these poor nations, for it hath an influence upon them all, it concerneth them all very palpably, I should be to blame, if I did not a little offer to you the remedies. I would comprehend them under two considerations. They are bound somewhat general. The one is, considering all things that may be done, and ought to be done, in order to security. That is one. And, truly, the other is a common head. The other is, doing all things that ought to be done, in order to reformation, and with that I shall close my discourse. And all that first hath been hinted at, was but to give you a sense of the danger that is most material and significant; for which you are principally called hither to advise of the remedies.

I do put them into this method, not but I think they are scarcely distinct. I do believe, truly, upon serious and deliberate consideration, that a true reformation, (as it may, and will, through God's acceptance, and by the endeavours of his poor servants be,) that that will be pleasing in his sight; and which will be not only that, which shall avert the present danger, but be a worthy return for all the blessings and mercies which you have received. So, in my conscience, if I were put to show it this hour, where the security of the nations will lie, forces, arms, watchings, parts, strength, your being and freedom, be as politic, and diligent, and as vigilant as

* By the preacher.

you can be, I would say in my very conscience, and as before Almighty God I speak it, I think your reformation, if it be honest, and thorough, and just, it will be your best security.

First, for that of security. We shall speak a little distinctly to that. You see where your war is. It is with the Spaniard. You have peace with all nations, or the most of them, Swede, Dane, Dutch. At present, I say it is well, it is at present so; and so with the Portugal, France, the Mediterranean Sea; both those states, both Christian and Profane. The Mahometans, you have peace with them all. Only with Spain, I say, you have a difference, you have a war. I pray consider it. Do I come to tell you that I would tie you to this war? No. As you shall find your spirits and reasons grounded in what hath been said, so let you and me join in the prosecution of that war, as we are satisfied, and as the cause will appear to our consciences, in the sight of the Lord; but if you can come to prosecute it, prosecute it vigorously, or do not do it at all.

Truly, I shall speak a very great word, one may ask a very great question. *Unde*, whence shall it come? Our nation is overwhelmed in debts. But I think it my duty to deal plainly. I shall speak to that which nature teacheth us. If we engage in a business, a recoiling man may, haply, recover of his enemy; but the courage of an enemy, surely, will be in the keeping of his ground. Therefore, it is that which I would advise you, that we may join together to prosecute it vigorously.

In the second place, I would advise you, that you would deal effectually, seeing there is such a complication of interests. If you believe that there is such a complication of interests; why then, in the name of God, that excites you the more to do it? Give me leave to tell you, that I do not believe that in any war, that ever was in former times, nor any engagements that you have had with others, this nation had more obligations upon them to look to itself, to forbear expense of time, precious time, needlessly to mind things that are not essential; to be quibbling about words, and, comparatively, about things of no moment; and, in the

mean time, being in such a case, as I suppose you know we are, to suffer ourselves to be wanting to a just defence against the enemies abroad, or not to be thoroughly sensible of the distempers that are at home. I know, perhaps, there are many considerations that may teach you, that may induce you to keep your hands tender from men of one religion, and of such an interest, as is so spread and rooted in the nation. Hence, if they seek the eradication of the nation, if they are active, as you have seen; and it hath been made manifest, so as may not be denied, to the carrying on of their designs; if England must be eradicated by persons complicated with the Spaniard; if this must be brought in through distempers, and falseness of men amongst themselves, then the question is no more but this: whether any consideration whatsoever shall lead us, for fear of eradicating of distempers, to suffer all the honest interests of this nation to be eradicated? Therefore, speak but generally of any of their distempers of all sorts, and where a member cannot be cured the rule is plain, *ense rescindendum est immedicabile vulnus;* and I think, it is such an advantage, as that nothing could ever be more properly used, since this or any nation was.

As to those lesser distempers of people that pretend religion, yet from the whole consideration of religion, which would fall under, one of the heads of reformation, I had rather put it under this head, and I shall the less speak to it, because you have been so well spoken to this day already. I will tell you the truth, that, that which hath been our practice since the last Parliament, hath been, to let all this nation see, that whatever pretensions be to religion, if quiet peaceable, if enjoyed conscience, and liberty to themselves, and not to make religion a pretence for arms and blood; truly, we have suffered them, and that cheerfully, so to enjoy their own liberties. Whatsoever is contrary, let the pretence be never so specious, if it tend to combination, to interests, and factions, we shall not care, by the grace of God, whom we meet withall, though never so specious, though never so quiet. And truly, I am against all liberty of conscience re-

pugnant to this. If men will profess, be they those under baptism, be they those of the Independent judgment simply, and of the Presbyterian judgment, in the name of God, encourage them, countenance them, while they do plainly hold forth to be thankful to God, and to make use of the liberty given them, to enjoy their own consciences; for, as it was said to-day, undoubtedly, this is the peculiar interest all this while contested for.

Men that believe in Jesus Christ, (that is the form that gives the being to true religion, faith in Christ, and walking in a profession answerable to that faith;) men that believe the remission of sins, through the blood of Christ, and free justification by the blood of Christ, and live upon the grace of God; those men that are certain they are so, are members of Jesus Christ, and are to him as the apple of his eye; whoever hath this faith, let his form be what it will, he walking peaceably, without the prejudices of others, under another form, it is a debt due to God and Christ, and he will require it, if he may not enjoy this liberty.

If a man of one form will be trampling upon the heels of another form; if an Independent, for example, will despise him under baptism, and will revile him, and reproach, and provoke him, I will not suffer it in him. If, on the other side, those on the Anabaptists shall be censuring the godly ministers of the nation, that profess under that of Independency; or those that profess under Presbytery shall be reproaching or speaking evil of them, traducing and censuring of them, as I would not be willing to see the day, on which England shall be in the power of the Presbytery to impose upon the consciences of others that profess faith in Christ, so I will not indure any to reproach them. But God give us hearts and spirits to keep things equal; which, truly, I must profess to you hath been my temper.

I have had boxes and rebukes on one hand; and on the other, some envying me for Presbytery, others, as an inletter to all the sects and heresies in the nation. I have born my reproach, but I have, through God's mercy, not been unhappy in preventing any one religion to impose upon

another; and truly, must needs say, I speak it experimentally. I have found it, I have, that those of the Presbyterian judgment; I speak it knowingly, as having received from very many counties; I have had petitions, and acknowledgments, and professions, from whole counties; as from Cornwall, Devon, Somerset, and other counties, acknowledgments that they do but desire they may have liberty and protection in the worshipping of God according to their own judgments, for the purging of their congregations, and the labouring to attain more purity of faith and repentance, that in their outward profession they will not strain themselves beyond their own line. I have had those, I have them to show; and I confess, I look at that as the blessedest thing which hath been since the adventuring upon this Government, that these times produce; and I hope I gave them fair and honest answers; and if it shall be found to be the care of the Civil Magistrate to keep thus all the professing Christians, and not to suffer all things said or done to provoke others, I think, he that would have more liberty than this, is not worthy of any. This, therefore, I think, verily, if it may be thus under consideration for reformation, if it please God to give you and me hearts to keep this even, in giving countenance to ministers, countenancing a just maintenance to them, whether by tithe, or otherwise. For my part, I should think I were very treacherous, if I should take away tithes, till I see the legislative power to settle maintenance to them another way; but whoever they be that shall contend to destroy them, that doth as really cut their throats, as it is a drift to take them away, before a way of preparation or other maintenance be had. Truly, I think, all such practices and proceedings would be discountenanced. I have heard it from as gracious a minister as any is in England; I have had it professed, that it would be a far greater satisfaction to them to have it another way, if the State will provide it. Therefore, I think, for the keeping of the Church and People of God, and professors, in their several forms in this liberty, I think, as it hath been a thing that is the root of visible profession, the upholding this,

I think, you will find a blessing in it, if God keep your hearts to keep things in this posture and balance, which is so honest and so necessary.

Truly, there might be some other things offered to you, in the point of reformation, *viz.* a reformation of manners; but I had forgot one thing which I must remember. It is their work, you know, in some measure; yet give me leave to say, and I appeal unto your consciences, whether or no there hath not been an honest care taken for the ejecting of scandalous ministers, for the bringing in of them that have passed an approbation. I dare say such an one as never passed in England before. And, give me leave to say, it hath been with this difference, that neither Mr. Parson, nor Doctor in the University, have satisfied those that have made their approbations;* though, I can say so, they have a great esteem of learning, and look at grace as most useful when it falls unto men, with, rather than without it, and wish with all their hearts, the flourishing of all those institutions of learning as much as any. I think there hath been a conscience exercised, both by myself and the ministers, towards them that have been approved. I may say, such an one, as I truly believe, was never known in England; and I do verily believe, that God hath for the ministry a very great seed, in the youth in the Universities; who, instead of studying books,† study their own hearts. I do believe, as God hath made a very great and flourishing seed to that purpose, so this ministry of England, I think, in my very conscience, that God will bless and favour it, and hath blessed it to the gaining of very many souls. It was never so upon the thriving hand, since England was, as it is at this day. Therefore, I say in these things, that tend to the profession of the Gospel and public ministry, you will be so far from hindering, that you will further it, and I shall be willing to join with you.

* Dr. Wallis, in his letters to Rev. Matthew Poole, (1658,) mentions "Dr. Bathurst, Dr. Ward, Dr. Conant," and himself, among the examiners at Oxford. See Dr. Grey, on *Neal* (1739); *App.* pp. 153—160.

† Dr. Wallis's reports are often favourable, as to their book-learning.

I did hint to you my thoughts about the reformation of manners; and those abuses that are in this nation through disorder, is a thing that should be much in your hearts. It is that, that I am confident is a description and character of that interest you have been engaged against, the badge and character of countenancing profaneness, disorder, and wickedness, in all places, and whatever is next of kin to that, and most agrees with that which is popery, and the profane nobility and gentry of this nation. In my conscience it was a shame to be a Christian, within these fifteen, sixteen, or seventeen years in this nation; either in Cæsar's house, or elsewhere. It was a shame, it was a reproach to a man; and the badge of Puritan was put upon it. We would keep up the nobility and gentry; and the way to keep them up is, not to suffer them to be patronizers, nor countenancers of debauchery or disorders, and you will hereby be as labourers in the work; and a man may tell as plainly as can be, what becomes of us, by our indifferency or lukewarmness, under I know not what weak pretensions, if it lives in us. Therefore, I say, if it be in the general, it is a thing, I am confident, that the liberty and prosperity of this nation depends upon reformation. Make it a shame to see men to be bold in sin and profaneness, and God will bless you. You will be a blessing to the nation; and by this, be more repairers of breaches than any thing in the world. Truly, these things do respect the souls of men, and the spirits, which are the men. The mind is the man, if that be kept pure, a man signifies somewhat, if not, I would very fain see what difference there is betwixt him and a beast. He hath only some activity to do some more mischief.

There are some things which respect the estates of men, and there is one general grievance in the nation. It is the law. Not that the laws are grievance, but there are laws that are a grievance, and the great grievance lies in the execution and administration.* I think, I may say it, I have as eminent judges in this land, as have been had, or that the nation has had for these many years.†

* See vol. ii. p. 419, *note* ‡.

† See *Burnet*, O. T. i. 82.

Truly, I could be particular, as to the executive part, to the administration; but that would trouble you. But the truth of it is, there are wicked and abominable laws, that will be in your power to alter. To hang a man for *6d.* *3d.* I know not what; to hang for a trifle, and pardon murder is in the ministration of the law, through the ill framing of it. I have known, in my experience, abominable murders quitted. And to see men lose their lives for petty matters: this is a thing that God will reckon for, and I wish it may not lie upon this nation a day longer than you have an opportunity to give a remedy, and I hope I shall cheerfully join with you in it. This hath been a great grief to many honest hearts and conscientious people, and I hope it is in all your hearts to rectify it.

I have little more to say to you, being very weary, and I know you are so. Truly, I did begin with that that I thought was to carry on this war, if you will carry it on, that we may join together in that vigorously: and I did promise an answer to an objection; but what will you prosecute it with? The state is hugely in debt; I believe it comes to——

The treasure of the state is wasted. We shall not be an enemy to your inspection, but desire it, that you would inspect the treasury, and how monies have been expended; and we are not afraid to look the nation in the face upon this account, and therefore we will say negatively, first, no man can say we have misemployed the treasure of this nation, and embezzled it to particular and private uses. It may be, we have not (as the world terms it) been so fortunate in all our successes. Truly, if we have that mind, that God may not determine us in these things, I think we shall quarrel at that which God will answer, and we hope we are able, (it may be weakly,) I do not doubt, but to give an answer to God, and to give an answer to every man's conscience in the sight of God, of the reason of things; but we shall tell you, that it hath been a piece of that archfire, that hath been in this your time, where there are flames good store, fire enough, and it will be your wisdom and skill, and God's blessing upon you, to quench them, both here and elsewhere. I say it again, the endeavours have been, by those that have been

appointed, by those that have been Major-generals, I can repeat them with comfort, that it hath been effectual for the preservation of your peace. It hath been more effectual towards the discountenancing of vice and settling religion, than any thing done these fifty years. I will abide it, notwithstanding the envy and slander of foolish men, but I say there hath been a design; I confess, I speak that to you with a little vehemency, but you had not that peace two months together. I profess, I believe it as much as ever I did any thing in the world, and how instrumental they have been to your peace, and for your preservation, by such means, which we say was necessity than from all instituted things in the world.

If you would make laws against the things that God may dispose, to meet with every thing that may happen, yea, make a law in the face of God, and you tell God you will meet with all his dispensations, and you will stay things, whether he will or no. But if you make laws of good government, that men may know how to obey and do, for government, you may make laws that have frailty and weakness, I, and good laws observed; but if nothing should be done, but what is according to law, the throat of the nation may be cut, till we send for some to make a law. Therefore, certainly, it is a pitiful, beastly notion, to think, that though it be for ordinary government to live by law and rule, yet ————* Yet to be clamoured at, and blottered at. When matters of necessity come, inviolably, then extraordinary remedies may not be applied; who can be so pitiful a person?

I confess, if necessity be pretended, there is so much the more sin, by laying the irregularity of men's actions upon God, who sent the necessity; who doth, indeed, send a necessity, but to prevent the end. For, as to an appeal to God, I own it, conscientiously, to God; and the principles of nature dictate the thing. If there be a supposition, I say, of that

* This defect in the MS. is peculiarly to be regretted, as the Protector was evidently defending that frequent exercise of "vigour beyond the law," which has been justly objected to his administration of Government.

which is not, every act at that time hath the more sin. This, perhaps, is rather to be disputed, than otherwise; but I must say, I do not know one action, no, not one, but it hath been in order to the peace and safety of the nation; and the keeping of some in prison hath been upon such clear and just grounds, that no man can except against it. I know there are some imprisoned in the Isle of Wight, Cornwall, and elsewhere, and the cause of their imprisonment was, they were all found acting things that tended to the disturbance of the peace of the nation.

Now these principles made us say to them: pray live quietly, in your own countries, you shall not be urged with bonds or engagements, or to subscribe to the government. Yet they would not so much as say, we will promise to live peaceably. If others be imprisoned, it is because they have done such things, and if other particulars strike, we know what to say, as having endeavoured to walk as those that would not only give an account to God, as another magistrate, but as to give an account to men.

I confess, I have digressed much. I would not have you to be discouraged, if you think the state is exceeding poor. Give me leave to tell you, we have managed the treasury not unthriftily, nor to private uses, but for the use of the nation and government, and shall give you this short account. When the Long Parliament sat, this nation owed 700,000*l.** We examined it, it was brought unto that, in that short meeting, that was within half a year after the government came to our hands; I believe there was rather more than less.† They had 120,000*l.* a-month; they had the King's, Queen's, Princes', Bishops' lands, all delinquents' estates, and the Dean and Chapters' lands, which was a very rich treasure. As soon as ever we came to the government, we abated 30,000*l.* the first half year, and 60,000*l.* after. We had no benefit of those estates, at all considerable, I do not think the fiftieth

* See vol. iii. pp. 55—58, 63 *note* †.

† This sentence, evidently imperfect, probably referred to "the little Parliament," 1653.

part of what they had, and, give me leave to tell you, you are not in so much debt, as we found you. We know it hath been maliciously dispersed, as if we had set the nation into 2,500,000*l.* debt; but I tell you, you are not so much in debt, by some thousands, I think, I may say, by some hundreds of thousands.

This is true, that I tell you. We have honestly, it may be not so wisely, as some others would have done, but with honest and plain hearts, laboured and endeavoured the disposal of treasure to public uses, and laboured to pull off the common charge, as you see, 60,000*l.* a-month; and if we had continued that charge that was left upon the nation, perhaps we could have had as much money, as now we are in debt.

These things being thus, I did think it my duty to give you this account, though it be wearisomeness to yourselves and me. Now, if I had the tongue of an angel, if I was so certainly inspired, as the holy men of God have been, I could rejoice for your sakes, and for these nations' sakes, and for the sake of God, and of his cause, that we have been engaged in; that I could move affections in you, to that which, if you do it, will save this nation; if not, you plunge it (in all human appearance,) and all interests, yea, and all Protestants in the world, to irrecoverable ruin.

Therefore, I pray, I beseech you, in the name of Christ, show yourselves to be men, quit yourselves like men. It doth not infer any reproach, if you do show yourselves men, Christian men, which will only make you quit yourselves. I do not think, that to that work you have in hand, a neutral spirit will do it. It is a Laodicean spirit, and we know what God said of that Church; it was lukewarm, and therefore he would spew it out of his mouth. It is not a neutral spirit that is incumbent upon you, and if not a neutral spirit, it is much less a stupified, inclining you in the least disposition the wrong way. They are, in their private consciences, every day making shipwreck, and it is no wonder, if these can shake hands with men of reprobate interests; such, (give me leave to think,) are the Popish interests, because the Apostle

brands them so, having seared consciences, though I do not judge every man, but the ringleaders are such. The Scriptures foretold there should be such. It is not such a spirit, will carry the work on. It is men in a Christian state, that have works with faith, that know how to lay hold on Christ, for remission, till a man be brought to glory in hope. Such an hope kindled in men's spirits, will act them to such ends as you are tending to, and so many as are partakers of this, and own your standings, wherein the Providence of God hath set and called you to this work, will carry it on.

If men, through scruple, be opposite, you cannot take them by the hand, to carry them, because it were absurd ; for if a man be scrupling the plain truth before him, it is in vain to meddle with him. He hath placed another business in his own mind, and to say, " Oh ! if we could but exercise wisdom, to gain civil liberty, religion would follow." Certainly there are such men who are not maliciously blind, which God for some cause, exercises. It cannot be expected that they should do any thing. These men, they must demonstrate that they are in bonds.

Could we have carried it hitherto, if we had disputed these things? I must profess I reckon that difficulty more than all the wrestling with flesh and blood. Doubting, hesitating men, they are not fit for your work. You must not expect that men of hesitating spirits, under the bondage of scruples, will be able to carry on this work, much less such as are merely carnal, natural, and such as having an outward profession of godliness, which the Apostle speaks of often, and are the enemies to the cross of Christ, whose god is their belly, and whose glory is in their shame, who mind earthly things. Do you think these men will rise to such a spiritual heat for the nation, that shall carry you such a thing as this, that will meet with all the oppositions that the devil and wicked men can make.

Give me leave to tell you, those that are called to this work, it will not depend upon formalities, nor notions, nor speeches. I do not look the work should be done by these, but by men of honest hearts, engaged to God, strengthened

by Providence, enlightened in his words, to know his word, to which he hath set his seal, sealed with the blood of his son, in the blood of his servants, and it is such a spirit as will carry on this work.

Therefore, I beseech you, do not dispute of unnecessary and unprofitable things, that may divert you from carrying on so glorious a work as this is. I think every objection that ariseth, is not to be answered, nor have I time for it. I say, look up to God; have peace amongst yourselves. Know assuredly, that, if I have interest, I am, by the voice of the people, the Supreme Magistrate, and it may be, know somewhat, that may satisfy my conscience, if I stood in doubt. But it is an union, really it is an union, between you and me, and both of us united in faith and love to Jesus Christ, and to his peculiar interest in the world, that must ground this work, and in that, if I have any peculiar interest that is personal to myself, that is not subservient to the public end, it were no extravagant thing for me to curse myself, because I know God will curse me, if I have. And I have learned too much of God, not to dally with him, and to be bold with him in these things; and I never was, and I hope I never shall be, bold with him, though I can be bold with men, if Christ be pleased to assist.

I say, if there be love between us, that the nations may say, these are knit together in one bond, to promote the glory of God against the common enemy, to suppress every thing that is evil, and encourage whatsoever is of godliness; yea, the nation will bless you, and really, that and nothing else will work off these disaffections from the minds of men, which are great, if not greater than all the oppositions you can meet with. I do know what I say. When I speak of these things, I speak my heart before God; and, as I said before, I dare not be bold before him. I have a little faith. I have a little lived by faith, and therein I may be bold. If I should not speak the affections and secrets of my heart, I know he would not bear it at my hands. Therefore, in the fear and name of God, go on with love and integrity against whatever arises contrary to these ends, which you have

known and been told of, and the blessing of God go with you, and the blessing of God will go with you.

I have but this one thing to say more. I know it is troublesome; but I did read a Psalm yesterday, which, truly, may not unbecome me, both to tell you of, and you to observe. It is the eighty-fifth psalm, that is very instructive and significant; and though I do but a little touch upon it, I desire your perusal at pleasure.

It begins, "Lord thou hast been very favourable to thy land; thou hast brought back the captivity of Jacob; thou hast forgiven the iniquity of thy people; thou hast covered all their sins; thou hast taken away all thy wrath; thou hast turned thyself from the fierceness of thine anger. Turn us, O God of our salvation, and cause thine anger towards us to cease. Wilt thou be angry with us for ever? Wilt thou draw out thine anger to all generations? Wilt thou not revive us again, that thy people may rejoice in thee?" Then he calls upon God as the God of his salvation; and then, saith he, "I will hear what God the Lord will speak; for he will speak peace unto his people and to his saints, but let them not turn again to folly. Surely, his salvation is nigh them that fear him." Oh, "that glory may dwell in our land; mercy and truth have met together; righteousness and peace have kissed each other. Truth shall spring out of the earth, and righteousness shall look down from Heaven. Yea, the Lord shall give that which is good, and our Land shall yield its increase. Righteousness shall go before him, and shall set us in the way of his steps."

Truly, I wish that this psalm, as it is written in the book, might be better written in our hearts, that we may say as David: thou hast done this, and thou hast done that; thou hast pardoned our sins; thou hast taken away our iniquities; whither can we go to a better God, for he hath done it. It is to him any nation may come in their extremity, for the taking away of his wrath. How did he do it? by pardoning their sins, and taking away their iniquities. If we can but cry unto him, he will turn and take away our sins. Then let us listen to him, and then consult and meet in Parliament,

and ask him counsel, and hear what he saith, "for he will speak peace unto his people:" if you be the people of God, he will speak peace, and we will not again turn to folly; which is a great deal of grudging in the nation, that we cannot have our horse-races, cock-fightings, and the like. I do not think these are unlawful, but to make them recreations, that they will not endure to be abridged of them, till God hath brought us to this spirit, he will not bear with us. Ay, but he bears with them in France, they are so and so. Have they the Gospel as we have? They have seen the sun but a little; we have great lights. If God give you a spirit of reformation, you will preserve this nation from turning again to these fooleries; and what will the end be, comfort and blessing? Then "mercy and truth shall meet together." Here is a great deal of truth among professors, but very little mercy. They are ready to cut the throats of one another; but when we are brought into the right way, we shall be merciful as well as orthodox; and we know who it is that saith, that if a man could "speak with the tongues of men and angels," and yet want that, "he is but sounding brass and a tinkling cymbal."

Therefore, I beseech you, in the name of God, set your hearts to this, and if you give your hearts to it, then you will sing Luther's psalm. That is a rare psalm for a Christian, and if he set his heart open, and can approve it to God, we shall hear him say, "God is our refuge and strength, a very present help in trouble." If Pope, and Spaniard, and Devil, and all, set themselves against us, though they should compass us about like bees, as it is in the 18th Psalm, yet in the name of the Lord we should destroy them. And as it is in this psalm of Luther's, "We will not fear though the earth be removed, and though the mountains be carried into the middle of the sea, though the waters thereof roar and be troubled, though the mountains shake with the swelling thereof. There is a river, the streams whereof shall make glad the city of God. God is in the midst of her, she shall not be moved." Then he repeats, two or three times, "The Lord of Hosts is with us, the God of Jacob is our refuge."

I have done. All that I have to say, is to pray God, that he will bless you with his presence; and, that he that hath your hearts and mine, would show his presence in the midst of us. I desire you will go together and choose your Speaker.*

The members repaired to the House, at the door whereof, some persons by his Highness's appointment attended, and received of every member a certificate from the clerk of the Commonwealth in Chancery, that he was returned to serve in this present Parliament, and approved by the Council; and thereupon, he was admitted into the House.†

Thursday 18. Resolved, that Wednesday next be a day appointed for fasting and humiliation to be kept by this House, and that the place shall be Margaret's Church in Westminster.‡

Resolved, that Wednesday, the 29th day of October next, be set apart for a day of public fasting and humiliation, throughout England, Scotland, and Ireland.§ And that the Lord Broghill, Sir George Booth, Mr. Drake, General Disbrowe, and Mr. Rous, be a Committee appointed to prepare a Declaration, showing the grounds of this fast, and report the same to the House, to be presented to his Highness for his approbation.

Ordered, that the lecturers, who preach the morning lecture in the Abbey at Westminster, be desired to begin their sermon at seven of the clock, and to end at eight of the clock,|| and then to resort to the House to pray with them daily, before they enter into their daily work.

Ordered, that the House do rise at twelve of the clock

* *MSS.* additions to *Ayscough*, No. 6125, pp. 231—283.

† See *infra*, p. 263 *note* ‡. On the proposal of "the Lord Commissioner Lisle, Sir Thomas Widdrington, Knight, Sergeant at Law, one of the Commissioners of his Highness's Treasury," was chosen Speaker. *Journals.*

‡ The divines were Philip Nye, Caryll, and Manton. *Journals.*

§ The divines, Owen, Griffith, and Thomas Goodwyn. *Ibid.*

|| See *infra*, p. 37, *note* *

every day;* and that Mr. Speaker do put the House in mind thereof.

Sir George Booth presented a letter to the House, directed to the Speaker, and subscribed by several persons. Which Mr. Speaker having read privately, by the direction of the House, the names of the persons who subscribed the same were read; and the letter afterwards read†.

Friday 19. The Bill, entituled an Act for renouncing and disannulling the pretended title of Charles Stuart to the Crown of England, &c., was read the second time, and committed to Lord Broghill, &c., and all the gentlemen of the Long Robe that are of the House.

The Serjeant acquainting the House that the Deputy to the Clerk of the Commonwealth in Chancery, did attend at the door with the returns, according to the order made yesterday, he was called in.

While he was at the bar, it was taken notice that some members of the House did walk up and down, out of their places, and speak one to another. And thereupon, it was moved and agreed for a rule, that while any stranger is in the House, no member ought to stir out of his place, nor speak unto another.

Friday 26. Ordered, that a Committee be appointed to consider of the business of the Portugals condemned in prison;‡ another condemned for murder twenty years since; and also touching prisoners condemned, and now in Exeter gaol; or any other of the like nature for treason or murder; and to state the particular cases, and report the same, with their opinion therein, to the House.

Monday 29. Ordered, that the post letters directed to the several members of this House, be brought to the door of this House; and that they be free from postage as formerly.

That the letters of the several members of this House that go to the several parts of England, Scotland, and Ireland, be also free from postage.

That a Committee be appointed, to consider of the abuses

* See *infra*, p. 37, *note* *. † See *infra*, p. 263 *note* ‡.
‡ See *infra*, p. clxxxvi.

in ale-houses, tipling-houses, inns, and taverns, tobacco-shops, and strong-water houses, and of gaming-houses, and of justices of the peace being brewers, or maltsters, or farmers,* or officers of the excise, or others, in undue granting licences; and to revise the laws touching ale-houses, and those made against drunkenness, and to reduce the same into one Bill, with such additions or alterations, as are necessary to supply the defects in them.

That the abuse in gold and silver lace, wearing silks and fine linen, and other excess in apparel, be referred to the Grand Committee for trade.

That it be referred to the Committee last named, to take into consideration the matter now in debate, touching undecent fashions; to prepare a Bill for the redress thereof, and report it to the House.

Thursday, Oct. 2. Mr. Secretary Thurloe reported from his Highness, the Lord Protector, several letters of intelligence from the fleet.†

Resolved, that a day of thanksgiving be appointed, to bless the Lord for the great mercies by him vouchsafed to this Commonwealth, in the success given to some of their ships against the fleet of the King of Spain, coming from the West Indies, on the 8th of September last.

That Wednesday next be the day set apart for this House, to be observed also within the Cities of London and Westminster, and all places within the late lines of communication.‡

That the fifth of November be appointed as a day of public thanksgiving throughout England, Scotland, and Ireland.§

* Of the revenue.

† "Oct. 2. A letter from Captain Stayner to General Blake and General Montague, sent by them to the Protector, wherein was an account of the engagement with the West India Spanish fleet, that the Vice-Admiral and one more were sunk, and two burnt, and one taken; and that the Captain saith she hath in her two millions in silver; and that it was even believed the Vice-Admiral had as much." *Whitlock*, p. 653.

"The Lord Willoughby moved the Protector for his enlargement out of prison, and for leave to go to Surinam." *Ibid.*

‡ The Divines appointed were Caryll and Row. *Journals.*

§ Fairclough and Sterry were appointed. *Journals.*

Tuesday 7. Resolved, that the consideration of the laws touching profane swearing, and the defects therein, be referred to the Committee for alehouses and drunkenness.

That it be referred to a Committee to consider of the statutes and laws, touching the wagers of artificers, labourers, and servants, and to present a Bill for farther redress herein; and for the more effectual putting the same in execution.

That it be referred to the same Committee, to take into consideration the habits and fashions of servants and labourers, and to prepare a Bill for the remedying the abuses therein.

A Bill against customary oaths was read the second time; and committed to Sir Christopher Pack, &c. and all that serve for corporations.

Thursday 9. Ordered, that Sir Thomas Honywood, a member of this House, have leave to go into the country for fourteen days, to bring up his lady and family.

That it be referred to a Committee to consider of the abuses in the excessive prices of wines; and the corrupting and mixture of wines; and the measure by which they are sold; and to prepare a Bill for redress of the evils therein.

Saturday 11. A letter from his Highness the Lord Protector, dated the 10th of October, 1656, was read.

Resolved, that Nathaniel Fiennes, Esquire, being appointed by his Highness the Lord Protector, with the approbation of the Council, is approved by the Parliament to be a Commissioner of the Great Seal.

That John Lisle, Esquire, is approved by the Parliament to be a Commissioner of the Great Seal.

That John Glynne, Esquire, Serjeant-at-law is approved by the Parliament to be Chief Justice of the Upper Bench.

Thursday 16. Mr. Speaker acquainted the House, that he had received a paper of articles against Thomas Burton, Esquire, one of the Justices of Peace for the County of Westmorland, a member of the House, from one Antony Hillary, who was at the door, and by order of the House was called in.

And being come to the bar, Mr. Speaker asking his name; he answered, Antony Hillary. And the paper being showed

to him, he did acknowledge the paper to have been exhibited by him; but the name subscribed to it was not his writing. He did justify the matter in the paper, according to witnesses, and thereupon withdrew.

And the said Antony Hillary being again called to the bar, Mr. Speaker demanded of what place he was. He answered, of Merrick in Yorkshire; and at the bar, subscribed the paper with his own hand; and after he was withdrawn, the said paper was read.

Mr. Burton, thereupon, in his place, gave an answer to the paper, denying the substance and circumstances of the accusation contained in the articles, and withdrew.

The certificates of divers justices of peace, ministers, gentlemen, and other persons, well affected to the present Government within the County of Westmorland, on the behalf of Thomas Burton, Esquire, and a certificate of the Mayor of Appleby, on the behalf of the said Mr. Burton, was this day read.

Ordered, that the said paper of articles, together with the said certificates, be referred to a Committee, to examine the matter, and report it to the House.

That it be referred to a Committee, to revise the statutes touching wandering, idle, loose, and dissolute persons, beggars, rogues, and vagabonds; and to reduce them into one law, with such alterations and additions as shall be necessary.

That it be referred to the same Committee, to consider of, and provide a Bill, for redress of the evils by such persons as live at very high rates, and have no visible estate, profession, or calling suitable thereunto.

That the Committee for ale-houses have power to offer to the House, something for ascertaining and disposing, to the use of the poor, the penalties and forfeitures, concerning ale-houses, and other the offences referred to that Committee.

That it be referred to the same Committee to prepare a Bill, to enable and require the raising of a stock for setting the poor on work.*

* A favourite project of that distinguished philanthropist, Thomas Firmin; who, at the same time, would provide for their instruction.

Saturday 18. Colonel Shapcot reported from the Committee, to whom the articles exhibited against Thomas Burton, Esquire, was referred.

That Major-general Lilburne gave this account unto the Committee: that Thomas Hillary, in the last insurrection, abused Mr. Secretary and himself, by his false information against several persons, who, upon his great undertakings, was employed by himself to make a discovery; and to that purpose had authority, and the assistance of soldiers.

But all that was done by the said Hillary, was the turning of a countryman out of his possession, and keeping of it himself, or it was kept for his use: whereupon, he was committed to the marshal. And it was the opinion of the said Major-general Lilburne, that he was a very loose fellow.

The question being put, that Thomas Burton, Esquire, is guilty of any of the matters laid to his charge, it passed in the negative.

Resolved, that Antony Hillary do stand committed to Newgate, during the pleasure of the House.

That the Serjeant-at-Arms do take the said Antony Hillary into his custody, and deliver him over to the keeper of Newgate.*

Monday 20. A Bill, touching marriages, and the registering thereof, and concerning births and burials,† being tendered and read; before the same was opened, exception was taken thereunto; for that the same was, in divers places, rased, interlined, and half of one of the sheets cut off.

Ordered, that the said Bill be delivered back to the gentleman who brought in the same. And the same was delivered back, accordingly, without being opened.

Colonel Chadwick reported from the Committee of Privileges, on the business of election for the town and borough of Lynne Regis, that the election made by the burgesses and

* I have inserted these passages, as containing almost all which can now be recovered concerning the writer of the Parliamentary Diary.

† See vol. ii. p. 38, *note* †.

inhabitants of the said town, of General Disbrowe and Guibon Goddard, as burgesses for this present Parliament, is void, and that the said General Disbrowe and Major-general Skippon, elected burgesses by the Mayor, Aldermen, and Common Council, have been duly elected.

The question being put, the House was divided. The *Yeas* went forth. *Yeas*, 81. General Disbrowe and Major-general Kelsey, Tellers. *Noes*, 73. Sir John Hobart and Sir William Strickland, Tellers.

Resolved, that the House do agree with the Committee in this Report.*

Colonel Jephson acquainted the House with a book delivered at the door, in print, entituled "Thunder from the Throne of God, against the Temples of Idols," with an epistle in it, directed to his Highness, the Lord Protector, and the Parliament of England; which epistle was now read.

Resolved, that Samuel Chidley be called in, to the bar. And he was, accordingly, called in.

And being come to the bar, the book was showed him, who acknowledged he wrote the epistle; and doth own it, and all that is in it; and owns the book too, and all in it, the printer's errors excepted.

Ordered, that this book, entituled "Thunder from the Throne of God, against the Temples of Idols," and the epistle of it, be referred to a Committee, viz. to Lord Commissioner Whitlock, &c.

That it be referred to the same Committee, to consider of a way to suppress private presses, and regulating the press, and suppressing and preventing scandalous books and pamphlets.†

Resolved, that Samuel Chidley be committed to the custody of the Serjeant-at-Arms attending this House.

Wednesday 22. The House was resolved into a Grand

* There is reason to regret this decision, as otherwise there might have existed another account of proceedings in this Parliament.

† See *supra*, p. cxliv. *note* *.

Committee of the whole House, upon the business of raising present money, and further assistance for carrying on the Spanish war.

The Master of the Rolls reported from the said Committee of the whole House, several resolutions passed by them.

Resolved, that it be referred to a Committee, to consider of the business of Papists' estates, and how that revenue may be improved; and to offer a regular and effectual way, for the conviction and conformity of Papists; and how the frauds and collusions in concealing Papists' estates, may be discovered; and the wrong thereby done to the State, may be redressed and prevented for the future.

That it be referred to the Committee to consider of the estates of delinquents, which have continued under sequestration, and who have refused or neglected to compound; and what may be fit to be done, in cases of such as have not paid their second moiety, and yet have enjoyed their estates; and also in the cases of children of such delinquents as did not compound in their lifetime, that the best advantage may be made for the Commonwealth, either by sale or otherwise, with respect unto such cases, and such further cases, as shall be offered to the House by the Committee.

Thursday 23. Resolved, that it be referred to a Committee, to consider of the state of the forests, and how they may be improved by sale or otherwise, for the advantage of the Commonwealth, and carrying on of the present affairs of the nation; having a special regard to the poor, and to propriety, and the preservation of timber fit for shipping.

That it be referred to a Committee to consider whether it will be for the advantage of the Commonwealth, to put higher imposition upon Spanish wines and fruits, with power to confer with merchants and such other persons, as they shall think fit, touching the same.

Monday, Nov. 3. Colonel Shapcot reports from the Committee for prisoners, the case of three Portuguese, condemned for murder, being servants to the late Portuguese Ambassa-

dor's brother, who was executed for the said murder;* it not appearing that the said persons had a hand actually therein, but only were present.

Ordered, that the said Committee do bring in a Bill for the pardon of the three Portuguese.

That the Committee for Recusants do sit this afternoon; and the members of this House, who are of that Committee, are enjoined to attend the said business.

Tuesday 4. Notice being taken, that General Montague, one of the Generals at sea, being lately returned from sea with the Spanish prizes, was come into the House, he being returned to be a member: it was

Resolved, that thanks be given from this House to General Montague,† for his great and good services done for this Commonwealth at sea.

Mr. Speaker did give him thanks accordingly.

Resolved, that the Lords Commissioners of the Great Seal, the Chief Justice, Baron Parker, and the rest of the members of this House that are in Westminster Hall, be sent for, to attend the service of the House.

The Serjeant was sent, with the mace, accordingly.

Friday 14. Captain Baynes reported from the Committee for excise and customs, the opinion of the said Committee.

Resolved, that the House doth agree with the Committee, that the custom of Spanish wines be raised from 4*l.* 10*s.* to 6*l.* the ton; the excise from 6*l.* to 9*l.* the ton.

* July 10, 1654. "The Portuguese Ambassador," says *Thurloe* (*S. P.* ii. 439) "at eight o'clock in the morning, signed a Treaty with the Protector, and departed from Gravesend at ten. His brother [Don Pantaleon Sa] was beheaded in the afternoon and his man hanged at Tyburn." See *Athen. Oxon.* (1592,) ii. 167, 534; Dr. Harris's *Lives*, (1814,) iii. 349, 350.

"The priests of Rome," says Sir Robert Howard, "have put it into men's heads, to die in the habit of a priest or monk when they are to be executed. Accordingly, I remember that the brother of the Portugal ambassador, who was beheaded on Tower Hill, died in the habit of a monk." See "*The History of Religion*, (1694,) pp. 24, 25.

† See him, Earl of Sandwich, vol. iv. p. 432, *ad fin.*

Ordered, that the further debate on this report be adjourned till to-morrow morning.

Saturday 15. The House resumed the debate upon the report from the Committee.

Resolved, that this House doth agree with the said Committee, that 3*l.* the ton excise, be also added to the 6*l.* already imposed upon Spanish wines now in the vintners' hands; and that the same be considered in the price of wines.

That the customs upon raisins of the sun, be raised from 2*s.* the hundred weight, to 5*s.* the hundred weight; and that the customs upon all other Spanish raisins be raised from 1*s.* 6*d.* the hundred weight to 3*s.* the hundred weight, provided that for so much of the said raisins as shall be exported again, all the customs be paid back, except 1*s.* the hundred weight for raisins of the sun, and 9*d.* the hundred weight for all other Spanish raisins.

That the excise of all tobacco of the English plantations, be reduced from 3*d.* to 1*d.* the pound; and that thereupon, no view or allowance be made for, or in respect of the said tobacco.

That upon all Spanish wines, in the out-ports, 30*s.* more shall be added to the custom formerly paid for such wines.

Ordered, that the Bill for restraining unnecessary suits upon bonds or bills, be read on Friday morning next.

That Mr. Nathaniel Bacon, and Major Aston, be added to the Committee for Nayler's business.*

Tuesday 18. Mr. Downing reported from the Committee of Trade, amendments to the Bill for the exportation of several commodities of the breed, growth, and manufactures of this Commonwealth.

Resolved, that the House doth agree with this amendment, that every gelding, that is transported by the natives, shall pay 20*s.*: that every foreigner shall pay for every gelding, 30*s.*

Friday 21. Ordered, that the report from the Grand

* See *infra*, p. 10, *note* *.

Committee for religion, touching the false printing of the Bibles,* be made on Saturday morning next.

Resolved, that no member of the House do remain in the Committee Chambers, during the time of prayers.

Mr. Downing reported from the Committee for Trade, a Bill giving liberty for transporting fish.

Saturday 22. An Act for settling the Cathedral, or College Church of Gloucester, upon the Mayor and Burgesses of the City of Gloucester, and their successors, was this day read a second time.

A Bill for settlement of a rent-charge of 100*l.* *per annum*, to be issuing out of the manors and lands of Samuel Johnson, Esq. for maintenance of 16 scholars, in several colleges, in the University of Cambridge, in pursuance of the gift of Robert Johnson, was read the second time.

The humble petition of the Doctors of the Civil Law, on behalf of themselves and their profession, was read and committed.

A Bill, entituled "An Act for taking away the Court of Wards and Liveries," was this day read the third time, and passed *nemine contradicente*.

Ordered, that this Bill be offered to his Highness the Lord Protector, for his consent.

The House being informed, that Edward Ruddock, who was arrested at the suit of William Pease, was at the door;

Being brought in, and examined, he saith: he is the servant† of Mr. Mason, a member of this House; and hath been so three weeks. And thereupon withdrew.

Resolved, that Edward Ruddock have his privilege, and be discharged of the arrest.

Thursday 27. Mr. Drake reported, that the Committee appointed for that purpose did, yesterday, attend his Highness, according to the order, to desire his Highness to appoint a time for the House to present unto him some Bills which have passed this House. And that his Highness hath ap-

* See *infra*, pp. 351, 352, *note*.

† This privilege appears to have been confined to *menial* servants.

pointed this morning, about ten of the clock, for that purpose, to be in the Painted Chamber.

Ordered, that Colonel White do take care that the Painted Chamber, and the passage thither, be cleared; and no person to come in but the members of the House, except such as his Highness brings with him.

The Serjeant brings word, that Serjeant Dendy was at the door with a message from his Highness. And, thereupon, he was called in.

And, having made two obeisances to the House, when he came into the middle of the House, with his mace in his hand, he declared to Mr. Speaker, that he was commanded by his Highness the Lord Protector, to let this House know that his Highness is in the Painted Chamber, and desires to speak with this honourable House. And thereupon withdrew.

Which being done, Mr. Speaker, attended with the whole House, the Clerk with the Bills in his hand, and the Serjeant with his mace, going next and immediately before him, went up to the Painted Chamber; where his Highness, attended with the Lord President and the rest of the Council, the Lords Commissioners of the Great Seal, the Lords Commissioners of the Treasury, the Lord Chief Justice of the Upper Bench, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the rest of the Judges, were expecting.

The Serjeant carried his mace upon his shoulder up to the table; where was a chair set for the Speaker, and a form for the Clerk.

The Speaker addressed himself to his Highness, and gave an account of the employment of the House during their sitting; and that many Bills for the public good were upon the anvil. Some were completed, whereof some public; of which he made a particular relation.

The first he styled a Bill for the Parliament's preservation. The second, a Bill for quieting the possession of the government. The third, a Bill of security to his Highness; and in him, to every person in the nation. The fourth, an Act of

manumission. And the fifth an Act of *****. Other Bills there were of private concernment to particular persons.

After which, the Clerk read the title of the first Bill, which was presented, being intituled an Act that the passing of Bills shall not determine this present session of Parliament.

Which Bill his Highness caused to be read; and upon reading thereof, declared to the Clerk his consent to the same, in these words, "We do consent." And, thereupon, the Clerk made an entry thereof on the Bill, in these words, "The Lord Protector doth consent." And read the same.

Then the Clerk read the title of the next Bill: which was an Act for renouncing and disannulling the pretended title of Charles Stuart, &c. Which Bill his Highness commanded to be read. Which was done accordingly; and his Highness's consent thereunto declared, entered, and published as before.

The titles of the rest of the public Bills, first, and then the private Bills, were read. And to each of them his Highness's consent thereunto declared, entered, and published as before.

The Sergeant at Arms attending his Highness, and likewise the Sergeant attending the Parliament, stood all this time with their maces on their shoulders. And, his Highness having made a short speech, the Speaker, with the rest of the members, departed in the like order as they came thither, to the Parliament House.

The Speaker made report to the House of the substance of his Highness's speech, upon the passing of the Bills now presented.

Resolved that these public Bills be forthwith printed and published.

That his Highness the Lord Protector be desired to issue a warrant to the Lords Commissioners of the Great Seal, for sending forth writs for proclaiming these five Acts of Parliament, in all the counties, cities, boroughs, and towns of England, Scotland, and Ireland, and town of Berwick upon Tweed.

Friday 28. Ordered, that a Committee be appointed to prepare and bring in a Bill to prevent the election of delinquents, and ill-affected persons, to places of trust and power in Corporations.

That the Committee do, in this Bill, provide for the preventing men of scandalous lives and conversations, to be elected officers in places of trust or power in Corporations; and also, to displace such persons out of such places.*

* In the foregoing pages, such passages, previous to the commencement of Mr. Burton's Diary, have been extracted from the Journals, as may contribute to preserve the connection of the Parliamentary History, during the Protectoral government.

The speeches in the Diary, I found interspersed, according to the taste of the age, with a great variety of phrases, borrowed from the ancients. These quotations formed, unfortunately, the least legible parts of the manuscript; and were, frequently, too short to be traced to the originals. After having endeavoured, by the best attention in my power, and so far as recollection would assist me, to overcome these disadvantages, I persuade myself that the errors which have escaped my observation, will be most readily excused, by those who are best prepared to detect them.

END OF THE INTRODUCTION.

PARLIAMENTARY DIARY,

&c. &c.

Wednesday, December 3, 1656.

A PRIVATE bill for the Patron and Vicar of Plymouth, to let leases for three lives, or ninety-nine years, at a rack-rent, was read the second time.

Mr. Pedley and *Mr. Robinson.** For form's sake, it should be committed By the common law, the Patron, Vicar, and Ordinary, joining, may let leases *ut supra;* but per statute, 13 *Eliz.*, they are restrained. It alters the law, and so by the orders it ought to be committed, to hear what any body can say to it.

Major-General Kelsey, *Mr. Fowell*, and *Mr. Bond.* There is no need to commit it, for none can except against it, seeing there is no power given by the bill to take fines, &c. but to let at a rack-rent, which (if that were observed in all corporations) it were no injury to grant such a liberty to all corporations in general.

Resolved, that the bill be ingrossed; but, by direction of the Speaker, [Sir Thomas Widdrington] the question was put for commitment, that being the proper question.

Mr. Speaker. Here are two private bills, concerning two of

* The writer of the MS. when he names more than one speaker, appears to express their united opinions; probably in the language of the speaker first named.

the members, which I suppose you will admit to be read as the first business.

An Act to enable Richard Carter, Esq. son and heir of John Carter, Esq. deceased, to sell lands for payment of the debts of the said John Carter the father, and Richard his son. Read the first time. His father's debts, three thousand pounds, wherein the son stands engaged per bond.

Colonel Rouse. He is sued. Judgments, executions, and ousters, against him; and in daily danger to be laid in prison. His rents of assize are one hundred pounds per annum; demesnes, four hundred pounds per annum. He desires this may be settled upon him, in fee for payment of debts, *ut supra.*

Resolved, that this bill be read the second time on Saturday.

Mr. Robinson.—I desire that longer time may be given for the second reading, for it may concern other persons.

The Master of the Rolls. [William Lenthall.] Judge-Advocate Whalley's case is very hard. I desire his bill may be read.

Mr. ——* *Scotch.* It being appointed to be read another day, and it being now adjourned *sine die,* it ought not to be read without a new order to that purpose; so I would not have it read now.

An Act for settling Henry Whalley and Erasmus Smith in certain lands fallen to them by lots, upon the adventures in Ireland: acres, Irish measure, 11,750; formerly of the Lords of Ardes † and Glainboise.

They pretend that one may compound, per the Lord Protector's ordinance; and that the other has articles of war, (viz. Lord of Ardes.) It was desired that these lots, being cast in first, might, notwithstanding these claims, be settled upon them.

Sir John Reynolds and *Colonel Markham.* Would have some expedient found upon committing of the bill, to satisfy Judge-Advocate Whalley some other way, for Lord Glainboise has compounded for these lands, according to the ordinance of his

* A blank in the MS. The name probably omitted of some Member for Scotland.

† This Lord, in August 1649, had joined *Ormond* "with 7000 Scots." —Whitlock's *Mem.*

Highness. You ought to be tender, likewise, in the articles which Lord Ardes pretends to; hope you will use mercy rather than rigour.

Mr. —— Scotch. Lord Glainboise hath been very faithful to you, though he had the hap to be a little wrong, for which he was sequestered; and having compounded (if it be reversed), who is secured?

Mr. Robinson. These adventurers ought to be specially respected; for they were the first that trusted you, as that gentleman told you. If you be not steady, who will trust you? I would rather violate the other claims, than those which were grounded upon so much trust and confidence in your cause, when it was but in its infancy. I speak it not for Judge-Advocate Whalley, nor for Mr. Smith. I know him not: but I speak for the justice and credit of your old cause. I would not have that trust violated, of all trusts whatsoever. The good old interest ought to be borne up.

Lord Lambert. Lord Glainboise did compound, and was to pay 10,000*l.*, which was as much, if not more, than the estate were worth if it were to be sold. Lord Ardes, by the articles, was to enjoy his estate till the Parliament took further notice. Now the Parliament has taken further notice by the declaration, whereby time was given for such persons, with their estates, to be gone.

All parties have been heard, too and again, in this last case, both before the Committee of Articles (who thought they had power to hear, but not to determine,) and before his Highness and his council, who thought they had not power in it, so they were transferred into Ireland, to be relieved according to the orders and ordinances of Parliament.

I would have this committed, and if you find a clear right in these Lords, or either of them, to their estates, it may be provided some other way for the adventurers; for it may be other men's cases as well as theirs. But I would have you specially tender in performing your trusts and credits. I know that Judge-Advocate Whalley and Mr. Smith have taken a great deal of pains in the business.

The Master of the Rolls. If this adventure be taken from

them, which they have assigned them by lot, they can never resort again; so by this means they lose the whole. I care not, so it be not totally lost. It was your first faith, and it may be well called an adventure; for Ireland was almost all lost when they adventured.

"The King made himself merry," said Luke Robinson, "by saying of these adventurers, that 'you carved the lion's skin before he was dead.'" I desire that it may be committed for the relief of the adventurers.

Major Waring. I am against the committing of this bill, for there are other trusts and faiths to be performed, and other members concerned. I desire that you would not take one and leave another, but consider all together. There are faiths of greater concernment unsatisfied.

Sir William Strickland and *Major-General Kelsey.* These adventurers should be satisfied out of the composition monies,* for you ought to take care of them that, out of mere conscience, trusted you, and to respect the justice of the Parliament and the army too.

Major Morgan. Lord Ardes' articles have been twice affirmed. Lord Glainboise hath done you more service than disservice. I would have them repaired; but, rather, that their estates might be assigned them in some other part of the nation; for in the North,† the Scotch keep up an interest distinct in garb and all formalities, and are able to raise forty thousand fighting men at any time, which they may easily convey over into the Highlands, upon any occasion; and you have not so much interest in them as you have in the inhabitants of the Scotch nation. I would have the adventurers have the lands fallen to them by lot; and the other claimers provided for elsewhere.

Resolved, That this Bill be committed in the Duchy Chamber ‡ to-morrow.

* The sums paid by Royalists, who had been permitted to compound for their forfeited estates.

† Of Ireland.

‡ Probably a court-room for the business of the Duchy of Lancaster, now occupied by Parliamentary Committees.

Mr. Bampfield and *Mr. Robinson.* All that serve for Ireland should be of this committee.

Sir Gilbert Pickering and *Mr. Highland.* Against any such distinction of members. It is an ill precedent, and looks not like an union. Desire that they may be all named, and name as many as you will, but let them not be exclusively added.

Mr. Ashe, the elder. As they sit in Parliament they are not Irishmen, but mere Englishmen.

Resolved, That all that serve for Ireland be of the committee.

Resolved, That the bill for small debts be resumed on Saturday next.

Mr. Pedley brought in the bill for the relief of prisoners and creditors,* read the first time. Appointed to be read the second time on Tuesday next.

* In this parliament, September 25, 1656, it had been ordered "That a committee be appointed to prepare a bill to compel those who are of ability, and lie in prison, to pay their debts; and also for relief of such as lie in prison and are not able to pay their debts."

This important object, of giving to creditors a legal power over the property rather than over the persons of debtors, which is still a *desideratum* in national policy, had engaged for some time the attention of those who possessed the powers of government. In 1653 was printed "a list of all the prisoners in the Upper Bench, remaining in custody the 3rd of May, 1653." This list appears to have been procured, in consequence of an order from the Long Parliament, just before their forcible dissolution. The number of prisoners amounted to 393.

The short Parliament, or Convention, which assembled July 26, 1653, presently appointed "a committee for prisons and prisoners." They reported, on the 17th of August, "A charge against the Marshall or Keeper of the Upper Bench; as also divers grievances in that and other prisons, both in reference to creditors and debtors, and several proposals, as well for relief of all creditors whose debtors are in prison, being able to pay their debts, and against the oppressions of poor prisoners; and appointed a bill to be brought in, upon the proposals reported, for relief of creditors and poor prisoners."

This bill, after several discussions, "was passed, October 5, 1653, and ordered to be printed and published, and the House appointed a letter to be written to the several commissioners in the several counties, for putting in execution this act." These Commissioners appear not to have

Mr. Speaker. It is time that I should leave the chair upon the business of the Scotch Union.*

Resolved, That the bill for the ministers of Northampton be brought in on Tuesday next, per Mr. Harvey.

Major-General Disbrowe. I would not hinder the bill for the Scotch Union, so desire another day for the bill for trial of actions in their proper counties. We have but a short time.†

Mr. Speaker. There was such a bill indeed, that no actions should be tried at the bar ‡ but such as the justices appointed.

Resolved, That it be read the second time on Tuesday next.

Mr. Highland. We have but a week to sit, so I would have you go on with the bill for the Scotch Union.

Sir Thomas Wroth. I shall not undertake to determine how long or how short a time we shall sit, so I would have you read the bill for recusants,§ and go on to dispatch other business in order.

Resolved, That the business of the Scotch Union be resumed to-morrow morning, at nine o'clock, without fail.

An Act for the discovering, convicting, and repressing of Popish recusants. Read the second time.

Mr. Bond. There is one desperate clause in it, as I understand it: if my wife turn Papist, I shall suffer sequestration of two-parts of my estate.

given satisfaction, for in the first parliament of Oliver, Protector, October 25, 1654, "several inconveniences" are described in the printed journals, and a committee directed to "prepare and bring in" a new bill. Nothing, however, appears to have been done effectually, and the abrupt dissolution of the parliament in January following, prevented any farther proceedings.

* Termed in the *Journals* "The bill for uniting of Scotland into one Commonwealth with England."

† The parliament, however, was not adjourned till June 9, 1657.—See *infra* p. 44. *note* †

‡ Probably of the Upper, formerly the King's Bench.

§ Those who refused to take the oaths appointed to be administered for the detection of Papists.

Lord Whitlock. I except against that clause, if it be as that gentleman opened it.

I would not have it solely left to the discretion of any persons to judge who are suspected to be recusants. This is too large a liberty. I would have rules in it. There are other things to which I could except, which I shall do at the committee.

Sir William Strickland. Something else should be provided: not only to renounce Popery, but to give some sign that a man become a Protestant, lest, instead of being a Papist, he become an Atheist.

I would have the oath taken more solemnly, either in open sessions or assizes, not before two justices.

Mr. Fowell. The Protestant guardian should not only be bound for his life, but the child should be brought up in the Protestant religion.

Mr. Robinson. I except against the preamble. 1. You asperse your war in charging it as the cause of the increase of recusants.

2. It is in the power of one justice in sessions. I never heard of one justice to make a sessions.

3. It will be chargeable, to bind people over to prosecute in such cases, without some consideration for their trouble.

4. I would have the conformity as publick as you can, for otherwise you will lay justices open to temptations. It was told you, not long since, of a white capon taken by a justice.

5. There is no clear way for the discharge of the estate. Being once seized and certified, it is hard to get it discharged.

6. It is a good clause, that against marrying of a Papist wife.

Dr. Clarges. I except, 1. against the manner of conviction, for the Pope can dispense with it.

2. Against the clause for marrying a Papist wife. The believing husband shall convert the unbelieving wife.*

Mr. Downing. That clause for marrying a papist wife is the best part of it. It is against the Scripture. Solomon

* Referring, no doubt, to the Apostle Paul.—1 *Cor.* vii. 14.

excepts against it.* It was that which the late king lost not only two-thirds for,† but all; by marrying of a Popish woman.

Mr. Bacon. Something should be added to the oath.

Mr. Butler. I am very much beholden to Mr. Bacon, for he helped most to the drawing of the act. I, for my part, have some exceptions against it.

Sir Gilbert Pickering. If a man shall renounce the supremacy of the Pope, and haply, in his own private opinion, may hold purgatory or some other thing in the oath, it is hard that for this he should be sequestered. I would have no man suffer for his bare opinion.

Mr. Butler, admitted to speak again, supports the motion.

Mr. Pickering. The end is not to punish any for their opinions, but to reduce them to the obedience of the government. Great sums go out of this nation from the Papists, and great sums come from beyond seas for relief of poor Papists.

He made a long story to little purpose.

Mr. Speaker. It was well observed to you by Mr. Robinson, that no provision is made for conformable heirs.

Major-General Packer. Clerks of the Peace and other officers may not do the business without fees, but be paid out of the two parts.

Mr. Floyd. I have exceptions against it, but will offer them at the Committee.

Resolved, upon motion by Mr. Bedford, That it be referred to the same Committee, and all that come to have voices. To meet to-morrow afternoon, in the Duchy chamber.

Resolved, on the motion of Mr. Croke, That the report concerning registers ‡ be made on Friday.

* Here is probably a reference to the warning respecting "the strange woman."—*Prov.* ii. 15, v. 20.

† It appears that the Popish recusant forfeited to the government, on conviction, two-thirds of his estate.

‡ These respected wills and letters of administration. The subject had been before the House, on the immediately preceding days. It appears that England and Wales were to have been divided into a number of locally convenient districts.

Resolved, on the motion of Colonel Cox, That the Committee for Norwich stuffs do fill up the blanks.*

Drugo Wright,† brought to the bar. Confesseth he directed the *subpœna* to be served upon Colonel Wilton, which his attorney told him he might do. He is sorry for his fault.

Mr. Speaker and *Mr. Bond.*. A prisoner ought not to stand up till the Speaker bid him rise. Have known a delinquent upon his knees all the time.

Mr. Bampfield. By the orders of the House, the prisoner ought not to kneel when the Speaker speaks to him.

Sir John Hobart. You will accept of his submission. He is an ignorant young fellow, and hearing that a messenger was gone down into Norfolk for him, he appeared *gratis*, and rendered himself to the Serjeant. I desire also, that the order out, to apprehend the attorney, may be withdrawn.

Lord Whitlock seconded what he moved.

Mr. Robinson. If you have such privileges I would have you to assert them, lest those without think you dare not own them. I doubt it is out of design to put these affronts upon you. I fear it makes others presume. You have had more complaints of this nature in this Parliament than in many years before. I would have you commit him till he petition to be discharged; and begin with him, to make examples.

Mr. Bond. I never knew any brought upon his knees before you, but he was returned back again to prison that he might petition before his releasement, and that it might appear upon your Records.

Colonel Wilton. I humbly desire he may be enlarged; for though very tender of the breach of your privilege, yet I am content, for my part, to pass it by, because the fellow is but young and ignorant.

Mr. Speaker. I have seen that, forty years ago, the serving of a *subpœna* was a breach of privilege.

Colonel Cox. A *subpœna* ought to be an extenuation of the offence. We are to judge by what things are, and not by

* According to the *Journals*, "have power to bring in the penalties for filling up the blanks."

† So named in the *Journals*. There is a blank in the MS.

what the offence will be. I would not have this gentleman strictlier dealt withall than others.

Major General Disbrowe. Sending for him hither asserts your privilege. It is not his putting in paper or petition that does it. I desire he may be discharged without petition.

Resolved, that, at the request of Colonel Wilson and the humble submission of the party, he be discharged; paying his fees.

Resolved, That the warrant against Edward Parker, the attorney, be withdrawn.

In the Speaker's Chamber sate the Committee for Norwich stuffs, where we despatched the bill. Mr. Butler had the chair.

In the Painted Chamber sat *James Nayler's** Committee. Nayler was called to answer to a new charge touching some unseemly communications between him and *Martha*,† his

* It appears from the printed *Journals*, that the case of Nayler, which will be found to occupy an undue proportion of the following pages, had come before this Parliament October 31 preceding, when it was *ordered*:

"That a Committee be appointed to consider of the information now giving, touching the great misdemeanours and blasphemies of *James Nayler*, and others, at Bristol and elsewhere; and to examine the truth thereof; and to report the matter of fact, together with their opinion therein: with power to send for the said *Nayler* and the said other parties, and such witnesses as they shall think fit. And that they have power to send for such magistrates, as they shall find to have been remiss in their duties therein. And likewise to look upon the laws and ordinances made against blasphemy. And to prepare a bill, as well for the supply of the defects therein, in reference to such blasphemies and misdemeanours, as also for taking away such old laws made against tender consciences, as are fit to be taken away. And they are desired to do this with care and speed."

The Committee were in number fifty-five; among them were Lord-Chief-Justice Glynn, Baron Parker, and most of the law officers of the Commonwealth, with Roger Boyle, Lord Broshill. In *Mercurius Politicus* is the following entry, Nov. 5, 1656:—"Divers strange and absurd pranks having been played lately by James Nayler, the quaker, at Bristol, he is sent for up by order of Parliament."

† Martha Simmons, when *Nayler* was riding through a town in Somerset, was one of "his company," who "spread their garments, and sang, 'Holy, holy, holy!' before him." *State Trials*, (1776,) ii. 265.

fellow prisoner. She stroked his head, and sat breast to breast, and desired him to go with her. He answered, he was not free, and several other particulars.

The Committee was ready to rise till Mr. Carey and Mr. Lister came in, and desired that Nayler might be asked something as to the substance of the whole charge against him. The sense of the Committee was against asking him any more questions, lest it should intricate the report; yet, for their satisfaction, that all might be clear, he was admitted to speak; and being asked if he had any more to say, he told us that he doubted some had a design to entangle his innocency, and instanced in something that one said, the other day, at the Committee, (it was Mr. Downing,) *We have gotten enough out of him.* Nayler said, this hath stuck upon his spirit ever since.

Yet, by good providence, the gentlemen that doubted, were more confirmed by his second answer; and acknowledged he said more, materially, in these last words, than in all the other times of his examination. The words were thus: —"I do abhor that any honour due to God should be given to me, as I am a creature. But it pleased the Lord to set me up as a sign of the coming of the Righteous One, and what has been done as I passed through these towns, I was commanded by the Lord to suffer such things to be done by me, as to the outward, as a sign, not as I am a creature."

Thursday, December 4, 1656.

An Act for surveying and repairing the high-ways of this Commonwealth, was read the first time. It was a long bill.

Resolved, that it be read the second time upon Tuesday.

A Bill to confirm the sale of lands sold by the late Earl of Huntingdon.* Read the first time.

* "Whereby he paid several debts: and for the sale of some other lands, for payment of the residue of his debts."—*Journals.*

A Bill for the better suppressing of theft upon the borders.* Read the second time and committed.

Mr. Speaker left the chair, and a great debate between Mr. Robinson and Mr. Bampfield about the chair, and after that a great dispute about which, Irish or Scotch business,† should be proceeded upon first; both being orders of the day. It was thought that it could not be determined without the Speaker taking the chair for Mr. Bampfield. Their debate would be fruitless, for he could put no question. The business of Scotland being last ordered, and *Major Ashton*, who serves for Ireland, giving way without further debate, the Scotch Bill was proceeded upon.

Mr. Disbrowe reported, from the sub-committee, the clause for confirmation of privileges of corporations in Scotland. Instead of *bodies politic and corporate* (which were words too extensive), they inserted the word *boroughs*. They added further, *with a saving to every man his right*, and *provided the liberties be not contrary to the present government.*

Instead of the words, granted by patent, *or* Act of Parliament,—granted and confirmed by patent, *and* Act of Parliament.

Captain Baynes. You have confirmed their laws, now you are confirming the privileges of their boroughs, which you know not. I doubt if, instead of an union, you make not a disunion. There may be a law amongst them to hang all Englishmen, and to banish them out of their boroughs, though they have settled themselves there to trade, or the like. I would have you not confirm any thing till you know it.

Colonel Edwards. You confirm all charters to them, that

* Entitled, "A Bill for the better suppressing of Thefts upon the borders of England and Scotland, and securing the good and honest people against all Felonies and other Misdemeanours." *Journals.* This Bill had been read a first time Nov. 29.

† It appears from the *Journals*, that two bills were now in progress: one "for uniting *Ireland*," and another "for uniting *Scotland* into one Commonwealth with England."

were granted to them by Act of Parliament at any time since the beginning of the world.

Mr. Downing. The clause is well enough qualified, for it lays their privileges at the feet of the next Parliament to alter. It ties them strictly to agree with the present government, with a salvo *cujus libet sui juris.*

The Charter and Act of Parliament is full as can be.

Colonel Sydenham. I less understand this clause than I did the clause that was committed. I would not have you at all confirm them till you know them. We know that very dangerous laws are amongst them. It was once death for an Englishman to marry a Scotchwoman, and so for a Scotchman to marry an Englishwoman. Would have you lay it aside, for I do not understand it.

Mr.——* If it be that you look back to all Acts of Parliament whatsoever, yet have confirmed these privileges, then it will not be so practicable. But if it relate only to such privileges as now are in force and use, you ought surely to confirm them.

Mr. Drury. Soldiers that are free to set up any trade in England, without apprenticeships, are barred by this clause to set up in Scotland, and which is contrary to the ordinance. I desire the same liberty may be extended to Scotland.

Colonel Edwards. This is an unreasonable confirmation, and your *salvo* does you no good at all.

Mr. Disbrowe. You confirm nothing but what the Parliament of Scotland have confirmed. I would have you refer only to such privileges as are granted, and are now in use. You have granted far more by confirming their laws in the former laws.

Major-General Packer. I see no danger at all by the passing of this clause; I think the provision is very comprehensive. Reserving particular men's rights, and agreeing it to the government.

He offered the word *confirmed* before *Act of Parliament.*

* A blank in the MS.

Mr. Margetts proposed, that what Mr. Drury offered might be considered in this clause.

Lord Whitlock. I doubt it is not for the service of this committee to pass this clause, as it comes in to you. If there be any difference between any Lord in Scotland, and the boroughs about any privilege, you determine the difference, and give it to the boroughs.

You may do damage to the Lords there. The chief magistrate may, at any time, revive their privileges, so there is no need of the clause. We have but confirmed London's and some few boroughs' privileges in England, and that upon serious view and examination of the Parliament what they were.

Sir Richard Onslow. The words being in the copulative, and not in the disjunctive, viz. "by Charter and Act of Parliament," I see no danger in the passing this clause.

Captain Baynes. If so, you have already confirmed those Acts of Parliament under the word *laws*, and what need this clause.

Major-General Kelsey and *Colonel White.* You should not confirm these privileges till you have first seen them.

Judge Smith. The Scotch Commissioners* have seen most of these charters, and have confirmed them; and this is no more than his Highness has granted them already.

Mr. Downing. You have confirmed none of their laws but only this: that justice shall be administered to the people of Scotland according to their laws.

They are easily made one with you, if you do not discontent them, by the influence you have upon their trade.

The boroughs pay a sixth part of the assessments.

I always understood *et* to be a conjunction copulative; and ever since I read logic, I remember this to be an infallible proposition—that if any part of the clause conjunctive be not true, all the clause fails.

* These appear to have been appointed according to Resolutions of the House, passed on the 1st, 4th, and 7th of October. See the *Journals*.

There cannot be a clause better qualified, and if you pass it not, you had as good lay all the bill aside.

Mr. Swinton. This clause may be laid aside, and there may be provision in the latter end, with a saving to the privileges of corporations.

Lord Cochran. Formerly there hath been contests about privileges between the sheriff and the boroughs, but those are all now settled and determined by acts of Parliament.

He offered the same amendments, that the words *and confirmed by Act*, &c. be added, and *now in force* also added, as Mr. Downing offered.

Major-General Whalley. This clause is but intruded, and has no relation to an union. This is a greater privilege than the corporations of England do desire, or would be granted by us.

It is a certain maxim, that no supreme power can conclude itself. Henry VIII. procured a law to be made, that no law made concerning him and his son might be altered; yet the next Parliament were careful to abrogate that statute.*

It is not proper for you to appoint what the next Parliament shall do. This clause thwarts with his Highness's ordinances,† for your soldiers to set up trades in all corporations.

Captain Baynes. Let them first renew all their charters with his Highness, and so you knowing them, may then confirm them. I am against both the clause and the proviso, for I am informed that they have some privilege to ingross all trading into their own hands, and force men to sell and buy at their own rates, by prohibiting them for some days, and then setting a rate upon them in their guild, called the Dean of Guild; which ties them, that none shall buy but at such rates.

Lord Tweedale. The proviso doth not confirm, but only reserves the privileges of the boroughs.

Mr. Robinson. The ingrossing of trade is, indeed, a great

* Here is probably some inaccuracy, as no such law now appears among the statutes of Henry VIII.

† In 1654.—See *Parl. Hist.* xx. 315.

mischief, not only there, but in other boroughs; where rates upon goods imported are usually set. Yet, I doubt, if you pass not this clause, you leave the privileges of their boroughs too open; I would have their trade encouraged. But for Englishmen incorporating with that nation their marriages, this, I doubt, is not yet for the service of England. I hope you intend not to confirm the Acts made in Hamilton's parliament, but would have them limited to a certain time.

Lord Lambert. I would have the boroughs have all possible privileges confirmed to them. But, as this clause is brought in, I cannot give my consent to it, having heard these arguments against it.

I except against several laws and customs in Scotland, as the racking and tormenting of people under the lash of their justice. The proviso comes in very unnaturally, to say that a bill of Union shall not extend to prejudice their privileges. It does rather confirm them than restrain them.

I would have it left to my Lord Protector, to confirm what charters he thinks fit to confirm.

I would not pass this clause, till it be understood what these privileges are.

Mr. Downing. I do not love to talk out of Parliament. This is a place to speak one's conscience in.

The constitution of the *Dean of Guild*, is the noblest constitution in corporations in the world. For a groat the Dean of Guild will do you enough right and justice.

Lord Strickland. I would have this clause pass as it is; otherwise it will be a great offence. *Stabitur presumptio donec probetur in contrarium.* It need not to be left to the Protector, for he may not confirm only, but he may erect a corporation when he pleases.

General words in treaties pass nothing. If one conquer a nation, and confirm their laws; it is to be understood of such laws as are just, &c. You will give them occasion to suspect that you are about to take away their boroughs; by refusing to confirm their privileges. This their enemies will be apt to insinuate.

Lord Chief Justice [Glynn.] If the not passing this clause do not stagger the Bill, why may it not be left out. But to confirm these privileges generally, it cannot be for your service, unless you knew what they were. Put the case, that a Bill should be brought in to confirm the privileges of all the corporations of England; should we do it? When the privileges of the Charter of London* were confirmed, all their privileges were particularly recited.

Mr. Downing. An Act of Union must be upon positives; so that the proviso will not help. So that argument of the noble lord is answered.

The second argument has gone all along in the ignorance of these privileges, therefore not to be confirmed. As an instance, if ignorance must excuse, we are going to set up a Court at York* to be guided by the course of the *Common Pleas*. I confess I understand not the course; must I go study four years to know them, before I can give my consent to the Bill for York: the like of the Bill for the Borders. Does Cornwall know that it is for our conveniency? Or if a law for Cornwall, I must go thither to know its conveniency for the place, before I give my vote. We must believe one another, of necessity.

Colonel Jones. I am sorry to hear it said that a Parliament does not understand the practice of the *Common Pleas*. I would have the clause left out, for our ignorance in this case is justifiable.

Lord-Chief-Justice. Ignorantia juris non excusat is true, if that gentleman be ignorant of his own laws, his own birthright; but to be ignorant of the laws of another Common-

* The 3d of November 1656. "A Bill for the erecting a Court of Law and a Court of Equity at the City of York, was, this day, read the first time." *Journals.* It appears from the *Journals* 20th November, that the provisions of this Bill extended to "the County of York, the City of York, and County of the City of York, the town and County of Kingston-upon-Hull, the County of Northumberland, the Town and County of Newcastle-upon-Tyne, the Town of Berwick-upon-Tweed, the County of Cumberland, City of Carlisle, and County of Westmoreland."

wealth, ignorance may excuse. So the comparison holds not, under his favour.

Mr. Downing. This is a judicature of the three nations, so I wonder why ignorance of any of their laws should excuse.

Judge Smith. Desired to be heard once or thrice as to the reflection upon the justice of that nation, and the late administration thereof for these four years, because it concerned him.

Lord Lambert. I have heard of St. George that was a champion for England; it seems there is now another St. George risen up for Scotland.* I must still insist upon it that it is not for us to confirm we know not what, but, as I said before, I would have it left wholly to his Highness to determine what are fit to be confirmed and what not, as may be here provided for.

Colonel White. I would have it left to his Highness to confirm what privileges of the boroughs he pleases, but to confirm we know not what is not to be allowed.

Mr. Downing. You should confirm them till next Parliament, and when you better understand them you will be more in love with them. If you be not, let them be altered.

A great debate whether the clause be first amended and then put to the question, whether to stand or no.

Colonel Jones. I compare this to the dressing of a cucumber. First pare, and order, and dress it, and throw it out of the window. Would have you first put the question to agree with the Sub-Committee.

Yet, on the proposal of Lord Widdrington [Speaker] agreed that the amendments be first put.

Upon the question upon the amendment the House divided.

64 *Yea.* Lord Cochrane [Teller.]
74 *No.* Sir Charles Wolseley [Teller].

Resolved that the whole clause be left out.

Sir William Strickland and *Mr. Downing.* Let them be confirmed till the next Parliament. If you do nothing in it, you will give them just cause to be jealous that you intend wholly to take away their privileges.

* The last speaker, George Smith, was "one of the judges for Scotland."

Doctor Clarges. It will be thought by the corporations that their privileges having been debated here, a negative is put upon them, and they are lost as to their privileges.

Mr. Robinson. Now that you have had this debate, I would not have you put the boroughs into jealousy that you intend to take away their privileges. I doubt to confirm them till next Parliament will not be enough. I would not have it now laid aside by a question; but that it may be recommitted.

Mr. Speaker proposed that it might be committed to the Committee to alter or bring in a new clause to that purpose.

Resolved, That it be referred to the same Committee.

Resolved, That another day be desired for this Committee to sit.

Mr. Speaker took the chair, and resolved that Saturday next this business be taken up again by the grand Committee.

It was offered for Monday, or Wednesday, to be resumed; but Lord Cochrane desired rather to suspend the Bill for this sessions, than give it so long a day.

In the painted chamber sat the Committee for Rodney's Petition,* and it is said there was high language between Lord Lisle and Lord Whitlock; but they being both wise men, and deeply concerned in the business, suppressed their passion with an *altum silentium.*

In the Chamber for the Committee of the Army, sat the Committee for the Courts at York,† and we passed through a great part of the bill, till Mr. Robinson came in, and held us upon the debate about an hour, whether to have a *Court of Equity* at York or not. When he was gone we passed a good part further, and adjourned till Saturday at two.

The same time and place we finished the clauses recommitted upon the Bill for *probate* of wills,‡ and, per motion by Major-General Lilburne, the Judges' salary was voted to 200*l.* per annum.§

* "The 22d of November 1656. The humble petition and appeal of George Rodney and Sarah his wife—was this day read." *Journals.*

† See *supra*, p. 17. ‡ See *supra*, p. 8. *note* §

§ It appears by the *Journals*, that it was this day *ordered*, "That the

Friday, December 5, 1656.

A private Bill, to enable Sir Thomas Elwood to sell lands for payment of his debts, read the second time and committed.

Major Haines brought in a private Bill, for confirmation of an agreement made between the Earl of Carlisle and his tenants, touching the dividing of a common at Nasing, near Epping, entitled an Act for Confirmation of an Agreement, &c. Read the first time.

Mr. Robinson. By the statute (by an agreement of landlord and tenant) you may improve; so there needs no Act to confirm it. A decree in Chancery will serve.

Sir Richard Lucy. I am one of the tenants, and know that it is the desire of them all to have this confirmed, which has caused a tedious suit and chargeable; and in regard Lord Carlisle has no issue, the tenants are jealous of posterity, and think they cannot be otherwise secure.

Major-General Packer. I know that that is the only reason why the tenants desire.

An Act for settling the Cathedral Church upon the Mayor and Burgesses of the City of Gloucester, for public, charitable, and religious uses, was read the third time.

Mr. Robinson. I except against the word "utensils" in the bill. There may be copes and crucifixes, &c. You do not give these away, I hope?

Mr. Speaker. These are all sold long since.

Sir Christopher Pack. There may be plate.

Major-General Goffe. It may be employed to charitable uses, &c. I would have the words *and no other* added there.

Resolved, That this bill do pass for a law.

Resolved, That his Highness' consent be desired hereunto.*

Bill prohibiting the building houses in *London* and *Westminster*, be read the first time on Saturday morning next.

* "The 1st of October, 1656." On the Report from a Committee "by the Lord-Chief-Justice Glyn," it was "Resolved that the Speaker, with the whole House, shall attend his Highness; where the Speaker, in the name of the House, shall present the Bills to his Highness for his con-

Mr. Fowell reported the bill from the committee, with amendments, touching rogues, vagabonds, and sturdy beggars.

1st Amendment, Blank filled up with 1st day of February.

2nd Amendment, Being wandering ten miles from his habitation.

3rd Amendment, Or other officer, added.

4th Amendment, After wandering, add, as aforesaid.

5th Amendment, Added the clause touching fiddlers and minstrels, declaring them to be rogues, vagabonds, &c.

Resolved, On the first amendment, to agree with committee.

2nd Amendment excepted against for too great a distance.

Major-General Packer. If they be but one or two miles from their dwelling, they may be called wanderers, I would have it.

Sir Christopher Pack and *Alderman Foot.* They should be confined to their own parishes, else the City will have no benefit by this clause; for though they do not beg, they may wander abroad loosely, &c. We are troubled in London with a sort of people that cumber the streets, lying at men's doors, watching opportunities to do a mischief, yet we not finding them actually doing any thing, cannot send them to the house of correction.

Colonel White. It is very well for ten miles distance.

Colonel Shapcot. The city of London may bring in another bill.

Sir Thomas Wroth. I cannot blame these worthy Aldermen that they press you to rid themselves of such wandering rogues.

Sir Gilbert Pickering and *Mr. Bodurda.* You give them sixty miles compass to rogue in, which is more privilege than ever beggars enjoyed, for by this means you establish them to

sent. That, when the Lord Protector shall pass a bill, the form of words to be used shall be these, *The Lord Protector doth consent.* In case the Lord Protector shall not consent in twenty days, a bill is to become a law." *Journals.*

be rogues; for though they do not beg, yet if they be doing any thing within these ten miles that he may do without, he shall be no rogue.

Major Audley. If you leave it in the power of justices to judge who shall be wanderers, for ought I know I myself may be whipped, if I be found but ten miles from my own house, unless the justice of peace will allow my excuse.

Mr. Cary. You should make it wandering out of their parishes; else the cities of London and Westminster will have no benefit by this expedient, and they have more of such sort than all England besides.

Sir Richard Onslow and *Mr. Highland.* If you make new wanderers and vagabonds, other than ever our ancestors knew of, let us know what they are. In the statute they are enumerated. By these *terminis generalibus*, any man may be adjudged by the justice to be a vagrant.

Colonel Edwards. They have chain enough, keep them within their compass. If they know they have ten miles to rove in, by this means you give them forty miles circumference.

Resolved, Not to agree with the committee in ten miles distance.

Mr. Ashe the elder, Major-General Packer, and *Alderman Foot.* Yet, seeing they are but dissolute persons that are comprehended in this Act, let them be confined to two miles or to their parishes.

Dr. Clarges. Give liberty for five miles, that you may suppress the Quakers,* who greatly increase, and pester and endanger the Commonwealth.

Major Audley. Ascertain what this *individuum vagum* is, lest it be *quidam homo*, any man. I would have the per-

* They first appear in the *Journals*, 30th December, 1654, when it was "Resolved—That it be referred to Mr. Serjeant Glyn, &c. or any three of them, to prepare a bill, touching Quakers, with power to them to receive informations, from the members of this House or others, touching these persons, the better to enable them to describe them in this bill." There were no further proceedings on this subject in that Parliament, which was dissolved the 22nd January following.

sons ascertained. If they be Quakers, I could freely give my consent that they should be whipped. I would have it ascertained what they are.

Captain Baynes. Unless you enumerate what these persons shall be, I cannot give you yea or no to it. For it may be extended to honest, conscientious men, who, haply not contented with their own ministers, go into another parish.

Resolved, That the word miles be left out.

Mr. Bodurda. In the statute touching fiddlers and minstrels, there has been a reservation of the privileges of one *Dutton.* I know not what it means, but I thought good to tell you of it.

Mr. Robinson. This privilege is excepted by another statute. These minstrels do corrupt the manners of the people, and inflame their debauchery by their lewd and obscene songs

Sir Thomas Wroth. Harpers should be included.

Mr.——— * Pipers should be comprehended.

Alderman Foot. I hope you intend not to include the *waits* of the City of London, which are a great preservation of men's houses in the night.†

Sir William Strickland. The general word minstrel will be best; for if you go to enumerate, they will devise new instruments.

Mr. Butler. Music is a lawful science, and I love it; but, in regard you restrain it to those places, I think the general word will serve well enough.

Mr. Highland. Add singing as well as playing.

Colonel Whetham. I hope you will not deprive men of their voices.

Mr. Speaker. Singing is a natural, playing an artificial music.

Resolved, To agree with the Committee in the 5th amendment.

Resolved, To agree with the Committee in all the amendments.

* A blank in the MS.

† Their perambulations appear, at this period, to have been nightly; but they have been long confined to the season of Christmas.

Resolved, That this bill thus amended be engrossed.

Mr. Croke offered a report from the Committee for Country Registers.*

Mr. Bampfield offered a report from James Nayler's Committee.

Sir Gilbert Pickering moved, that the report for registers might be heard.

Resolved, That Nayler's report be heard.

Dr. Clarges. The order of the day was the Bill of sale.

Mr. Bampfield reported these resolutions.†

That the matter of fact and the resolutions of the committee, was ordered to be reported.

A short history of Nayler's life.

1. Born near Wakefield.

2. In the service nine years, till he fell sick.

3. A member of an independent church, but cast out for blasphemy and suspicion of lewdness with one Mrs. Roper.

4. After he had been up and down, he went to visit the Quakers in Cornwall, where he was committed as a wanderer; his principles being, that he may lie with any woman that is of his own judgment.

The articles against him read, and summed thus—

That he assumed the gesture, words, names, and attributes of our Saviour Christ.

Major-General Skippon. I do not marvel at this silence. Every man is astonished to hear this report. I am glad it is come hither; I hope it will mind you to look about you now. It is now come to your doors, to know how you that bear witness of Christ, do relish such things. God's displeasure will be upon you if you do not lay out your especial endeavours in the things of God; not to postpone them. You are cumbered about many things, but I may truly say this, *unum necessarium.*

It has been always my opinion, that the growth of these things is more dangerous than the most intestine or foreign

* See *supra*, p. 8.

† For this Report at large, see *State Trials*, (1776) ii. 265—270.

enemies. I have often been troubled in my thoughts to think of this toleration; I think I may call it so. Their * great growth and increase is too notorious, both in England and Ireland; their principles strike both at ministry and magistracy.

Many opinions are in this nation, (all contrary to the government,) which would join in one to destroy you, if it should please God to deliver the sword into their hands. Should not we be as jealous of God's honour, as we are of our own? Do not the very heathens assert the honour of their Gods, and shall we suffer our Lord Jesus thus to be abused and trampled upon?

Wherefore do you sit in that chair, but to bear witness of the truth? to know who are for Christ, who not? My conscience would fly in my face, if I should be silent. Lay these things to heart, and make it not an ordinary concernment.

I am as tender as any man, to lay impositions upon men's consciences, but in these horrid things. I have been always against laws for matters *ex post facto;* but, in this, I am free to look back, for it is a special emergency. You would extend to punishment. This offence is so high a blasphemy, that it ought not to be passed. For my part, I am of opinion, that it is horrid blasphemy, and ought to be punished as blasphemy; and you ought not to let it slip through your fingers without due punishment. I know not how to extenuate the offence, or I should set myself to it.

Major-General Boteler. Though my indisposition might plead for my silence, yet I should go out with a troubled conscience, if I should not have borne my witness against it. We all sit here, I hope, for the glory of God. My ears did tingle, and my heart tremble, to hear the report. I am satisfied that there is too much of the report true. I have heard many of the blasphemies of this sort of people; but the like of this I never heard of. The punishment ought to be adequate to the offence. By the Mosaic law, blasphemers were to be stoned to death. The morality of this remains,

* Designing, no doubt, the Quakers.

and for my part, if this sentence should pass upon him, I could freely consent to it.

If we vindicate not the name of Christ in this, he will vindicate himself.

They * are generally despisers of your government, contemn your magistracy and ministry, and trample it under their feet.

The magistrate is to be a terror unto evil works. If we punish murder and witchcraft,† and let greater offences go, as heresies and blasphemy, which is under the same enumeration; for my part, I could never reconcile myself nor others to leave out the latter and punish the former offences.

It is not intended to indulge such grown heresies and blasphemies as these, under the notion of a toleration of tender

* The Quakers.

† There had been, during a few years before this time, several convictions and executions for the supposed crime of witchcraft. See, especially, " A prodigious and tragical History of the Arraignment, Tryal, Confession, and Condemnation of six Witches, at Maidstone, in Kent, at the Assizes there held in July, Fryday 30, this present year 1652, before the Right Honourable Peter Warburton, one of the Justices of the Common Pleas, London, 1652."

The narrator, relating the destruction of those six women by hanging, gravely adds, " Some there were that wished rather that they might be burnt to ashes; alleging that it was a received opinion among many, that the body of a witch being burnt, her blood is prevented thereby from becoming hereditary to her progeny in the same evil, which by hanging is not."

This judicial tragedy at Maidstone called forth " An Advertisement to the Jurymen of England, touching Witches," by Sir Robert Filmer, whose *Patriarcha* has been long exploded, but who in this pamphlet, as well as in a later one on *Usury*, has anticipated the good sense and just reasoning of our times. There was also published in 1655, by Thomas Ady, M. A. " A Candle in the Dark, profitable to be read by all Judges of Assizes, before they pass the Sentence of Condemnation against poor People who are accused for Witchcraft."

The delusion, however, continued long after this period. Even Sir Matthew Hale contributed to extend it, by a conduct at the Bury assizes, in 1664, unworthy of any judge, and especially of such a jurist. He then left for execution two unfortunate women, on evidence which now appears to have been utterly insufficient. The act of 1 James I. c. 12. on which supposed witches were prosecuted, was not repealed till 1736.

consciences. He that sets himself up in Christ's place, certainly commits the highest offence that can be.

Sir Gilbert Pickering. Debate not the punishment till you be possessed of the matter of fact, which must be read in parts to agree with the Committee.

Old Mr. Rouse. First put the Report to the question, either in part or in gross, and when you have agreed that it is blasphemy, and that you have an Antichrist amongst you, then you will not, I hope, be at a stand what to do.

Mr. Downing. This man, in short, makes himself God; only distinguisheth by the visible and invisible. God is invisible, as in his own being. This distinction is threadbare.

The heathen, they worship not the stock and stone as visible, but as invisible, *est Deus in cœlis.* Christ himself never said that the flesh was God.

Here is no liberty of conscience in this case, for he makes himself God himself. Our God is here supplanted. If he be God, then we must worship him. He is our God as well as the women's God. If a devil, is it fit he should live? Then you will have two Gods.

You know what the Parliament did with a Strafford in civil cases,* and what the Parliament has done against corrupt judges. If ever there was a business for a Parliament, this is it. To supplant your God, oh, horrid! If such a thing as zeal is to be allowed, certainly in this. And we cannot show too great a detestation of it.

Colonel White. There is something omitted in the Report which Nayler said, and that to me seemed as blasphemous as any thing: that "the old bottles were broken, and new wine poured in;" intimating that he is the new Christ, and the old one laid aside. For my part, I am sufficiently convinced of the matter of fact, and would have you first vote that it is horrid blasphemy; and if you make the sentence death, I think he very well deserves it. I shall give my Yea.

* This reference to the parliamentary proceedings against the Earl of Strafford, in a style of approval, is remarkable from one who made his court to Charles II. in 1660, by basely betraying two of his *quondam* republican associates to the vengeance of the restored Stuart.

Sir William Strickland. The gentleman that did the Report has done it extreme faithfully. I attended the Committee all the time.

If there be such a thing as a traitor, certainly this is he, that sets up himself as a Saviour. I would have you first vote the matter of fact whether it be blasphemy or no.

Mr. Solicitor-General. [Ellis.] It were fit you should have the party before you at this bar, to hear what he will say to the Report when it is read to him, which is the most orderly in point of law. It is the course of proceedings in all criminal cases. This done, I shall freely give my consent for his punishment, it being as high an offence as can be committed.

Sir William Strickland. I hope you will be as zealous for your Jesus as the heathens were for their Diana of the Ephesians, and that you will bear your testimony against it as solemnly as may be. I desire he may be brought to the bar and hear the report read.

Colonel White. You have matter enough against him. I attended the Report and believe it to be true; but, for general satisfaction, I would have him brought to the bar, and adjourn for an hour, and sit again immediately upon this business.

Mr. Bond. The proceedings against the Archbishop [Laud] was thus: you first agreed the matter of fact, and then drew up a bill,* and so brought him to the bar, and then passed sentence upon him. I would have you first vote the matter of fact, that he is guilty of blasphemy, and then send for him.

Lord Strickland. This seems not reasonable, that a man should first be condemned, and then heard. I would have him called to the bar, to hear what he will say to the Report.

Mr. Bedford. I am glad to hear the general sense of the House, so much against this horrid blasphemy. All the eyes of the nation are upon you for it, to see what you will do for

* See the Articles of Impeachment, *State Trials,* (1776), i. 828.

God in this business. I would have you not to leave it, but sit forenoon and afternoon till you have done the business.

Major-General Jephson. The Bishop of Canterbury's case was another than this. You were his judges. You are possessed of this business by a Committee already. I would have you put the question, whether this gentleman be guilty of blasphemy or no, and then proceed to know whether you will give sentence upon him yourselves here, or leave him to law. Happily there are some laws yet in force whereby you may proceed against him.

Mr. Attorney-General [Prideaux]. I conceive you have the matter of fact before you, sufficient to ground your indictment upon, for I think it not so needful that you should draw up a charge against him in regard the Report from the Committee is enough. I would have him come to the bar and either confess or deny, &c.

Lord Fiennes. We ought all to bear witness against such a horrid blasphemy, but I would not have you be too hasty, but would have the committee to draw up a charge against him out of the Report, and then call him to the bar to answer this charge.

Mr. Speaker. If you call him to the bar, and he deny it, then you must go over all the charge and the evidence.

Mr. Rouse. The laws against blasphemy and Ranters are in force, and you may proceed upon them; for I doubt you distrust the power which is already in force in this kind, and the government doth not alter the case.

Mr. Bampfield. I should agree with this noble lord,* that he might be transmitted to law to be proceeded against, according to those Acts he mentions. I doubt it will be but wholly to lay aside the business, and so render all vain. Your time seems to be short. The putting of it off will be a wholly laying it aside.

If either you refer it back again to the Committee, or call the party to the bar, you must travel into all the evidence, and so render the whole matter fruitless. He has been three times before us, and the Committee was every time more sa-

* Of the Council.

tisfied of the horridness of the blasphemy. I would have you put the question whether he be guilty of horrid blasphemy.

Judge-Advocate Whalley.—Let the party be brought to the bar, and the whole matter be read unto him, and then ask him what he has further to say; and then let him withdraw, and so proceed to judgment, both upon the matter of fact and the punishment of the party.

Lord-Chief-Justice. I shall not delay your judgment upon this vile wretch; but God would have us proceed in a just way, though against the vilest person.

I am at a stand which way to put in, for your direction. I believe none here can give you a precedent of this nature.

Whatsoever authority was in the Houses of Lords and Commons, the same is united in this Parliament.

The proceedings formerly in this House were only to prepare a charge, and appoint a Committee to prepare evidence. This was transferred to the House of Lords in Lord Strafford's case and the Bishop of Canterbury's. We are not now preparing a charge against Nayler. You put a great trust in a Committee, but how? It is but in order to something to be done here.

That which sticks with me is, whether there is a witness against him at all; not one against him upon oath. This is a proceeding against the law of God, and the fundamental law of the nation. This House (though they never used it) have power to examine upon oath.

The Report itself is so exactly done, that you may easily draw out articles against him, and then call him. Haply he may confess and then you need no witness. If not, you may examine, if it be but one witness. There must be proof in this case, and that, in this place, to justify your proceedings as agreeable with the fundamental way of proceedings.

Major-General Packer.—The Report is a sufficient charge against him. I would have you call him to the bar and hear the charge read, and after you hear what he says, then proceed.

Mr. Robinson.—Every man here ought to be satisfied, as

fully as may be, before he gives his vote in matters of life. All our judgments are concerned in it. But I would have us not so straiten ourselves in time, as to neglect the order of our proceedings. I would have you call him to the bar; if he deny the charge, you must allow him his traverse. If he say *not guilty*, you must prove. Put it off till Monday.

Colonel Markham. You need not fetch witnesses from Bristol. Twenty of the members of this House know the truth of the matter of fact, from Nayler's own confession.

I would have you proceed upon this business in the afternoon, while it is fresh in our memory.

Major-General Disbrowe. I know no reason for this speed; for we may offend as well in proceeding and sudden stepping into judgments; especially in matters that concern life, which, when taken, we cannot restore. It is a weighty matter, and you may err on both hands. This is the first occasion that ever we had of this nature, here. I would have us to do things so as to justify us, before both the face of God and the nation too.

I would have it referred to a Committee of the Long Robe, to prepare a way to proceed.

Major-General Goffe. I would not have us too hasty in this matter, but refer it to a Committee, to prepare a way for proceedings in this case against to-morrow or Monday.

Mr. Attorney-General. I think you are sufficiently possessed for your proceeding to judgment in this business; unless in the matter of the oath, which sticks with me most.

Sir Richard Onslow. I think, where confession is, there needs no witness, and, as I understand the Report, he hath confessed enough. If you had not referred it to a Committee you might have brought him to the bar.

If you declare your judgment upon former laws, then it will not be with the honour of this Parliament to transfer the matter to another judicature, having taken such cognizance of the business wherein the nation expects your result.

In Strafford's case, you proceeded upon the legislative power. I would have you, this afternoon, debate it, whether

you will proceed upon the legislative way or the judicatory way. But I would have you preserve your honour, both before the nation and your enemies too.

Mr. Recorder [of London, Sir Lislebone Long.] I appeal to that gentleman, if ever he knew any confession of the party before a Committee to be evidence in this House; I know his experience is great. For instance, confession of the party before a Justice of Peace, or Grand Jury, is no evidence. If the party, after, deny it, you must prove it. Proceed which way you will, that cannot be evidence against him which was only confessed at the Committee.

It is fit a charge should be prepared, and he brought to the bar. If he confess it, we are then convinced of the truth of the Report, and may proceed to sentence; and it is fit he should know that he is to answer for his life. I would have a charge prepared against to-morrow morning.

Lord Whitlock. This case is new, and ought to be seriously considered; for though this wicked fellow deserves all punishment that can be inflicted upon him, that which I fear is the consequence as to future, in the manner of proceedings which may hereafter concern any man's life or fortune. It is a case of blood, and you ought to proceed solemnly, by calling the party hither, and witnesses, if need be. I would have it referred to the Committee, to consider of the manner of proceeding against James Nayler.

To send it back to any inferior jurisdiction, is below the honour of a Parliament. I would have the Committee to resolve you how you will proceed, whether upon your judicatory or legislative power.

Mr. Bampfield. If I were against any thing to be done in this business, I should be for referring it back again to the Committee, for I certainly know this is as much as to say you will do nothing in it; for it will be a work of some weeks.

The whole evidence doth arise upon his own confession. Though no witnesses were sworn before the Committee, yet depositions before magistrates, at Bristol and other places, were taken upon oath. The eyes of God, of all the nation,

and all the world, are upon you; and if you lay this aside, and do nothing in it, I shall say it is no more Nayler's sin, but set it upon your doors.

I would have him called to the bar this afternoon, or in the morning, seeing so many desire it.

Sir William Strickland. Let him be called to the bar this afternoon, for I would not have our zeal in this business, which seems to be so unanimous, to meet with the least damp or coldness. For my part, I am very well convinced of the matter of fact, having attended the Report for most part, so that we may proceed freely to judgment; yet, for general satisfaction, let the Report be read to him, and demand his answer.

Lord Lambert. It is matter of sadness to many men's hearts, and sadness also to mine, especially in regard of his relation sometime to me. He was two years my quarter-master, and a very useful person. We parted with him with great regret.

He was a man of a very unblameable life and conversation, a member of a very sweet society of an independent church. How he comes (by pride or otherwise) to be puffed up to this opinion I cannot determine. But this may be a warning to us all, to work out our salvation with fear and trembling.

I shall be as ready to give my testimony against him as any body, if it appear to be blasphemy. You are jurors, judges, and all, in this case. I would have you careful in your manner of proceeding. It deserves consideration: witnesses, *viva voce*, must be heard here. You ought not to tie your judgments upon any man's eyes or ears; but to come to a solemn and serious debate of it. I would have it referred to a Committee. I hope your time will be longer, that you need not scant yourselves in this matter.

I confess I did not think the business to be of this nature, though I heard much rumour of it abroad. It is very much sorrow of my heart, and I hope nothing shall quench my zeal against it; but I would have it regular.

Dr. Clarges and *Mr. Butler.* This proceeding has been as

solemn as could be. The first day that the Committee met, it was as like a Grand Committee as could be; for most of the members were there. We are ripe for a question; I would have us not to quench our zeal, but to adjourn for an hour, and proceed in the afternoon.

Major-General Skippon. For my part I am fully satisfied with the matter of fact. If you put it off, I fear Nayler's sin will prove a national sin, and consequently a national judgment, for, I fear, to delay it will wholly lose the business. I would have it adjourned till to-morrow morning, and no business to intervene.

Mr. Drake. That is more than you can promise, that nothing should intervene: for if you do it the first business to-morrow, the house will be thinner; and if you enter upon any debate, you know not how long it will hold you. I would not have you delay a matter of this nature, which deserves your speedy and serious care. I would have you adjourn for an hour.

Judge Smith and *Mr. Reynell.* It might be taken up this afternoon, and adjourn for an hour, and bring Nayler to the bar, and read the whole matter to him.

Colonel Sydenham. We may err as well in our too hasty zeal in this weighty business. It is fit we should well consider of the manner of our proceeding, for the honour of it. For my part, I cannot but bear my testimony against the matter; but, in regard it may haply reach to life, let us not do justice in an unjust way. I would have no negative, neither, in this debate, but go on unanimously into the offender's punishment, and, in order thereunto, to adjourn till to-morrow morning, that you may fully debate this business.

Mr. Bacon. That we may not lose the benefit of our debate to-morrow, if you do adjourn till then, I hope you purpose not that any should speak again that have spoken to this debate, otherwise your work will be endless. Whereunto the Speaker agreed that none ought to speak again to the debate adjourned.

Mr. Moody. The person himself may be brought hither to-morrow morning.

Resolved, That this debate be adjourned till to-morrow morning, and nothing to intervene.

Mr. Bond. Nobody should be suffered to come to him in the meantime.

Major-General Skippon. I doubt, unless you put the question about calling him to the bar to-morrow morning, you'll lose your whole debate. I desire that question may be put.

Major-General Kelsey. If you intend this, something must be determined previous to this vote; how you shall demean yourself, whether to prepare a charge against him, or read the Report as it is.

Colonel White. Put the question whether the charge now against him shall be read to him at the bar.

Colonel Whetham. We are surprised in the vote, if we must not resume the debate to-morrow, before Nayler be called.

Lord Cochrane. You will not longer suffer this fellow to personate Christ before your eyes, and be so suspensive what you shall do with him. I would have you call him to the bar to-morrow morning, and proceed.

Sir Gilbert Pickering, Major-General Kelsey and *Colonel Jones.* Put not a question that may preclude the vote of others who think the debate is adjourned. The order of the house is that you should not proceed further.

Major-General Packer. This question is fair, for we that agreed to defer it till to-morrow, are also concluded in our vote, for though the debate was adjourned, it was in order to the calling him to the bar.

Mr. Nathaniel Bacon and *Mr. Downing.* It is fit you should keep him close. He has many friends in the city, who may acquaint him with your proceedings, so that he may stand mute, or deny.

Lord Strickland. You ought not to meddle with any debate upon what you have adjourned.

Sir Christopher Pack. By this rule you cannot put a question about letting none come to him; if all further debate in order to the business be excluded.

Sir William Strickland. Such a leper ought to be sepa-

rated from the conversation of all people. This is no harm to the debate.

Sir Gilbert Pickering. I am against keeping him private, but would have him rather to know the danger he is in, that it concerns his life. Who can tell but the terror of death may so work upon him as that he may retract his errors. I hope there is none here but desire his repentance rather than his ruin. I speak my heart in this thing, though none second me.

Resolved, That he be kept close prisoner till further order of this house.

Mr. Downing proposed that James Nayler be brought to the bar to-morrow morning.

Sir Richard Onslow and *Major-General Kelsey.* The members are by this means precluded. Haply it will not be thought fit to call him to the bar at all. This was part of the debate which was adjourned, and properly you cannot proceed to put this question.

Lord Claypole. My opinion is against this question; for, besides the main objection, other questions will rise about the time, which you cannot determine now, and what you shall say to him when he comes.

Captain Stone and *Major-General Skippon.* I would have him called to the bar to-morrow, and the report read to him, lest you lose the fruit of this debate and to-morrow too.

Colonel Shapcot. The proper question is to agree with the Committee. Haply you may have no occasion to call him, till sentence.

Colonel Whetham and *Mr. Cary.* I desire you would inform the House what was the debate that was adjourned. If this about calling Nayler to the bar was not the debate, I beseech you that you would not put this question. Other questions would arise upon it, and you must fetch candles.*

* At this period, and long after, the House was accustomed to rise by day-light, and generally by twelve at noon. Candles were introduced only on special motion. Thus, according to *Lex Parliamentaria*, (1690,) p. 102, " Sir William Widdrington and Sir Herbert Price were sent to the Tower for bringing in candles against the desire of the House."

Mr. Bedford and *Mr. Bacon.* It is very considerable that you should be unanimous in this debate, as you have hitherto been; and to the end there should not be a negative at all in the business, I am willing that the question be for the House to adjourn, and to forego the other question.

This debate held till almost four, and then the House adjourned.

The Grand Committee of Religion sate this night.

Saturday, December 6, 1656.

An Act for the Forest of Deane * read the second time.

Colonel Shapcot and *Mr. Bond* proposed that it might be committed.

Resolved, that it be committed to the same Committee.†

Colonel Rouse moved for the order of the day, Nayler's.

Sir Christopher Pack. I move that a short Bill touching the Earl of Huntingdon may be read, as ordered.

"1717, 6 February," it was "Ordered and declared, that when the House shall be sitting, and day-light shall be shut in, the Serjeant-at-Arms attending this House, do take care that candles be brought in, without any particular order for that purpose."—*Journals.*

The following *Orders* will serve to contrast the ancient with the modern practice of the House:—"1614, 31 May.—That this House shall sit every day, at seven o'clock in the morning, and begin to read Bills secondly at ten o'clock. 1642, 19 April.—That whosoever shall not be here at prayers every morning at eight o'clock, shall pay 1s. to the poor. 1659, 31 May.—That Mr. Speaker do constantly, every morning, take the chair by eight o'clock, and that the Council of State, and Committees of this House, do forbear to sit in the morning after eight o'clock, and do then give their attendance on the service of the House; and that the House do rise, every day, at twelve o'clock, and that no new motion be made after twelve o'clock, but that Mr. Speaker is hereby enjoined then to rise." As late as 1696, and probably much later, the House "Resolved to proceed on business at ten o'clock." Committees sat in the afternoon and evening, as well as very early in the morning.

* "A Bill for mitigation of the forest laws within the forest of *Deane*, in the County of *Gloucester*, and for the preservation of the wood and timber."—*Journals.*

† "The Committee for the Forests, and the Bill for the preservation of timber."—*Ibid.*

An Act for confirmance of the Sale of certain lands sold by the late Earl of Huntingdon, for payment of his debts, &c. was read a second time and committed.

The House resumed the debate upon the report made yesterday, touching James Nayler, and, after debate, he was sent for and heard at the bar of the House. So far in the *Diurnal.**

I was not at the beginning of the debate, but with the Border's Committee.

Mr. Floyd. I would have you make a court for the trial of Nayler, that you may keep your legislative power, and proceed judicially. It is not only *malum prohibitum,* but *malum in se.* It is against the law of God, of nature, and nations too. Though the bishops be taken away, the law against blasphemy is not taken away. I would have a particular court erected to hear and determine.

Lord Strickland. It is a hard case that we should have no law in force to try this gentleman, but you must have recourse to your legislative power. This House never took up that power but upon extraordinary occasions, with a *protestando* not to draw it into precedent. If there were a law to try him without, others are better judicatories in such cases; but to condemn him first, and then try him, as was offered to you, is very hard.

I think it but fair that he should have a fair trial, to hear what he will say, and hear the witnesses, if they agree in the evidence, and then condemn him or acquit him.

Colonel Cox. This is a matter of great moment. If there had been a law to this purpose, you had not had this trouble.

The eyes of all the nation are upon you for this issue. The world abroad says it is liberty of conscience has brought this fellow before you. I am of the same opinion. I am as much for liberty of conscience as any man, but when one runs into these extravagancies I think he exceeds that liberty.

* Probably one of those weekly Newspapers *Mercurius Politicus, Public Intelligencer,* &c.; if not, to the MS. Journal of the House, from which the printed *Journals* were afterwards compiled, and which the author of this MS. will be found occasionally consulting.

To the order of your proceedings. First, call the party hither and read the charge, and ask him, guilty or not guilty, and thereupon order your proceeding, before you prepare a bill; for I would have him have all the fair way of trial that may be. It concerns his life.

Resolved, That Mr. Bodurda be heard again to this business.

Mr. Bodurda. I am sorry it should fall to my lot to put you to the question. For my speaking, I rise not to trouble you with long speeches. I find the House divided: some would have him called to the bar; others tried at law. I offer an expedient.

I would have you first put it to the question, whether to agree with the Committee, and whether this be a sufficient charge whereon to arraign this person.

Major-General Disbrowe. I shall offer an expedient, though haply foolishly: that this fellow may be banished; for life is precious, and you have matter enough, already, to ground such a sentence upon.

Major Audley. I move that his Highness's advice may be desired in it, and yet, in the mean time, that you would provide a law against such blasphemy for the future, and proceed when you have thus advised.

Mr. Church. I desire he may be called to the bar, as often moved. That you would set apart one of these three days, which you have left, to seek God in this business; for if we be not tender in God's honour, he will not honour us. We ought to be zealous in this business as in Achan's case.*

Mr. Highland. It would make any tremble to hear these horrid things, and to think what this fellow's profession was, and what it is now. To deny God, or to make himself equal with God. We ought to vindicate God's honour, if his name be upon us, but we must honour him as well in the order and justness of our proceedings; not to judge before you hear. All judges are tender in this. You have heard no witness against this man. Let him have a fair trial. I

* See *Joshua* vii. 18.

am against his banishment; for you must send him to some of your plantations, and there he will infect more: the like consequence will be if you imprison him. I would have him brought to the bar, and let him hear the charge against him read. Haply he will confess as much as you will desire of him. If he be guilty of these things, let him not longer infect the nation.

Mr. Bampfield. The calling him to the bar, is but a mean to delay the business. The great argument is, that you are not to credit what you have from others' eyes or ears. You believe your Committees' Report in all other matters, that concern the lives, liberties, and estates of three nations. Nay, without the report of a Committee, you have, at one breath, concluded that all the men that have been cut off in the Spanish war, were justly cut off, and that shall be cut off in that service; for you have, without further examination, agreed the Spanish war to be undertaken upon just grounds, and you will pursue it.* The like has been formerly done, in votes that have cut off the lives of 100,000 persons without any examination. You ought to credit the Committee then, certainly, in a matter of lesser nature, though I would have you tender in this business. You see by the eyes of your Committee, and what they do is the act of this House, I am sure, in other cases.

Again, The manner of the proceeding at this Committee was more solemn and exact than at other Committees; for I believe most of the House were there.

As to that of the want of an oath: We did charge them, in the most solemn manner that we could possibly devise, that they would be careful in what they said, what was the concernment, before whom, in whose presence. We had no power to administer an oath.

* "The 1st of October, 1656; Resolved, upon the question, by the Parliament, *nemine contradicente*, that the Parliament doth declare the war against the Spaniard was undertaken upon just and necessary grounds, and for the good of the people of this Commonwealth. And the Parliament doth approve thereof, and will, by God's blessing, assist his Highness therein."—*Journals*.

But it does not only depend upon these affirmations of the witnesses; but upon Nayler's own confession. There lies the main stress. It was foul enough before, but the ugliness of it, upon his examination, and his carriage at the Committee did more appear than before. It did more than fasten the information, which was but historical to the matter.

He confessed that the woman said these words and expressions, which Mr. Piggott, by Providence, came to the Committee and informed; "Rise up, my love, my dove, my fairest one, why stayest thou amongst the pots;" only he denied the woman's kissing his hand.*

I conceive you have the matter-of-fact fully before you; and the objections answered, to the evidence, which wholly depends upon his own confession.

If you bring him to the bar, upon what will you proceed? If you take his answer in parts, then you must debate the parts. If to the whole, he may, with the Archbishop, desire time to answer to it; † so you shall know where you begin, but where you will end I know not, if you take this course. The first question ought to be, as it was first moved, whether this offence be blasphemy, or no.

Colonel Sydenham. I should be sorry to spend your time in this business, but I cannot advise you to go a greater pace

* "At Nayler's last examination before the Committee, being Wednesday, the 3rd instant, (December) one William Piggott did inform, that Nayler, sitting in a chair, where he is now a prisoner, one Sarah Blackbury came to him and took him by the hand, and said, 'Rise up, my love, my dove, my fair one, and come away. Why sittest thou among the pots?' And presently put her mouth upon his hand, and sunk down upon the ground before him.

"To which Nayler himself, being examined by the Committee, confessed she took him by the hand, and spoke the words aforesaid, but denies the putting her mouth upon his hand, and such bowing-down; but saith, that he sat low, and that he was not free to go with her. And Nayler being asked to whom she directed that speech, answered, 'To the Lord, and to him that raiseth from the dust, and casteth them down that are exalted.' And being asked whether he reproved her for that expression, he answered, he reproved her not."—*State Trials,* (1776) ii. 270.

† See *State Trials,* (1776) i. 833.

than ought to be. I know nothing of the shortness of your time, this gentleman, haply, knows more of it.*

I have met with no argument to convince me that we should agree with the Committee before you hear the party. I would not have such a thing drawn into precedent. 1. It may be any man's case, hereafter, to be accused for an offence, and from the bare Report of a Committee, to have the sentence of death passed upon him without further hearing. This gentleman told you now, what a full Committee there was at this examination, and yesterday he told you how hard it was to get a Committee together.

2. If the stress of the whole lie upon his own confession, your work will be easier if you call him to the bar.

3. This gentleman told you, that every time that the party went off from the Committee, they were more satisfied with the matter of fact, than before. I would have this House also satisfied in this.

4. It is said you agree with the Committee in matters of great consequence that concern life and liberty, &c. but you do not undertake to be the executioner. For that of the Spanish war, it differs certainly from this case: we do not draw the blood upon us, for they are and were our enemies.

This Report is of many particulars, and like Strafford's case. The charge is accumulative blasphemies.

Mr. Ashe, the elder.—You ought first to declare him guilty of such a crime: then draw up the Bill of Attainder against him, and then call him to the bar. But your previous question is to agree with the Committee.

* Here is, probably, as on former occasions, a reference to some apprehension of a speedy dissolution. Yet this could not take place, without a direct violation of the *Instrument of Government*, December 16th, 1653, of which the following was the 8th Article:—

"That neither the Parliament to be next summoned, nor any successive Parliaments, shall, during the time of five months, to be accounted from the day of their first meeting, be adjourned, prorogued, or dissolved, without their own consent." The Protector had strictly observed this article, by not dissolving the former Parliament, which met September 3rd, 1654, till it had existed exactly five lunar months.

Mr. Croke. Under favour, this gentleman, though an old* Parliament-man, is mistaken in the manner of your proceedings. It is against the orders of the House to speak again today, for at this rate I know not where you will end.

We are most of us, as private persons, satisfied with the matter of fact, wherein the worthy reporter has taken a great deal of pains, in the faithful report of it. Every man, I hope, that professes the name of Christ, will bear his testimony against this blasphemy.

But, by all rules of law and justice, you ought first to call him to the bar; haply he may deny matter of fact, haply matter of law. He may say it is not blasphemy. I would have him called to the bar.

Major-General Skippon. I move that he may answer positively to the Report.

Sir Gilbert Pickering. I move that it may be respited till Monday. It is now twelve,† and it will take your time so long that you will be forced to sit as long as you did yesterday, which will not agree with many men's healths that are here.

Major Beake. You have two questions before you. First, to agree with the Committee. Second, to call Nayler to the bar.

I am for the first. The objection, it seems, lies against the truth of the Report. Certainly greater solemnity could not be at a Committee than was at this Committee; almost 150 there. You have given greater credit to a Committee in matters of property and liberty, instanced in the bills for sale, &c.

A matter of the like nature cannot possibly fall before you, as private persons. I presume few of us but do believe that the confession was, *re vera*, true, and it is fixed in every man's breast. Those that argue from the greatness of the punishment, look further than I can divine.

I suppose none can tell what his sentence shall be till the offence be agreed on. If you want a law, who can supply it,

* James Ashe was member for Bath in the Long Parliament.

† See *supra*, p. 36, *note*.

as in the case of a Strafford, but a Parliament. Shall punctilios and modalities and forms, bind and tie up a Parliament? We are not thus strait-laced; arguments from consequences are not good in these cases; when the nature of the thing ties us punctually to perform it.

Every man is satisfied that this ought highly to be taken notice of. You are no more bound to precedents than in Strafford's case. You may create a form when you please. It is a notorious reflection upon the Committee, to give them absolutely the lie.

If the party stand mute or deny, where are you then. For my part, I conceive your proper question is, to agree with the Committee.

Major-General Goffe. By the orders of the House the other is the proper question.

Captain Baynes. However others look upon Nayler, I look upon him as a man, an Englishman. I would have him so tried as to bring in a bill of attainder against him, or leave him to the law. It is below you to honour him with a trial here; but if it must be otherwise, let him be called to the bar, and proceed judicially against him, lest the precedent be of dangerous and ill consequence to other persons, whose lot it may be, in other cases.

Mr. Bedford. When, in the long Parliament, you did by a law confiscate men's estates and lives and liberty, both in England and Ireland, had you any more, nay so much, evidence as in this case, though, I presume, justly too. For my part, as a private person, I am sufficiently convinced of the matter of fact. Yet, to the end we might be unanimous in this thing, I desire he may be called to the bar and heard: but although he should deny it, I dare affirm it. He did speak blasphemy in my hearing, which is sufficient to conclude my judgment.

Sir William Strickland. I have taken an oath to stand for the liberty of Parliament. I always understood a Report from a Committee to be good evidence against an offender. I would not have this passed without clearing the honour of Parliament. With this salvo for your honour and liberty, for

general satisfaction call him to the bar, that all the world may know you do him more liberty than you needed. I would have your proceedings justified as much as may be, and him left inexcusable.

Colonel Briscoe. *Qui per alium per se* is the case of your Committee, and if you agree with the Committee, what needs further examination? I always understood a Report to be evidence, else you reject what is your liberty, as I have heard, though not so well acquainted with the orders of the house, that *frustra fit per plura quod fieri potest per pauciora.* My opinion is clear that the question is to agree with the Committee.

Mr. Lister. That no more time may be spent, call him to the bar. For my part, I am not satisfied with the Report in all particulars. I desired at the Committee; in the close of the business, that he might be heard again, to see whether the notes that the gentleman had taken did agree with Nayler's sense or no. So I desired he might be called, but was overruled.

Resolved, That Nayler be forthwith called to the bar and have the charge read to him, whereunto he is to give his answer Yea or No.

Captain Hatsel was speaking to have the debate put off till Monday, but Colonel Purefoy took him down.

The Master of the Rolls resumed Captain Hatsel's motion. In a matter of this consequence you ought to take time fully to hear the whole matter.

Mr. Bond. That gentleman ought to have asked your leave before he had spoken against the vote, immediately before he was orderly taken down.

Mr. Speaker. In regard the third part of the House was gone, it was properly moved to adjourn.

Mr. Downing. I wonder what the word "forthwith" means, if it may be taken away by a subsequent vote. It is to no purpose to make laws or orders, if the word "forthwith" cannot be understood. I think it looks more like immediately than like Monday morning; else I understand nothing.

James Nayler being brought to the bar, refused to kneel or to put off his hat. The House agreed beforehand that they would not insist upon his kneeling, being informed that he would not do it, and that he might not say that was any part of his crime. They would not give him that advantage; but commanded the serjeant to take off his hat.

Mr. Speaker asked him of his name and country as in the Report, whereunto he answered after the old way of canting;* confessed all but that passage about Mrs. Roper. "It might be," said he, "she kissed me. It was our manner; but when I found their extravagancies I left them. All that knew me, in the army and elsewhere, will say I was never guilty of lewdness; or so reputed. I abhor filthiness. See if any can accuse."

The clerk read the charge to him in parts, which he, upon the matter and in effect, confessed, what was in the Report, saying, "I do not much mind what is behind; I believe the Committee, many of them, will not wrong me;" or, "I stand to what they testify;" or the like expressions he used; "It is likely I said so;" "I cannot say against it," &c.

Being asked about assuming the title of *the fairest of ten thousand*, he shifted it notably thus. He that has a greater measure of Christ than 10,000 below him, the same is the fairest of 10,000.

Question. King of Israel; assumed you thus?

Answer. As I have dominion over the enemies of Christ, I am King of Israel spiritually.

Q. Are you the judge of the world?

A. I cannot deny what I said at the Committee. But the Speaker, desirous to help him, here said, "Mind what you say; are you the judge, have you no fellow-judges." Then he answered "No;" saying again, "I hope you have so much justice and charity as not to wrest my words;

"God set up this vessel as a sign of his coming, but not li-

* Being asked whether his name were James Nayler, he answered, "He is so called." Being asked, "How long he hath been so called?" He answered, "Ever since he can remember."—*State Trials* (1776), ii. 271.

mited in this vessel, though it is thence that the hope of Israel springs."

Q. Why did you ride into Bristol in that manner?

A. There was never any thing since I was born so much against my will and mind as this thing, to be set up as a sign in my going into these towns; for I knew that I should lay down my life for it.

Q. Whose will was it, if not yours?

A. It was the Lord's will, to give it into me to suffer such things to be done in me; and I durst not resist it, though I was sure to lay down my life for it.

Q. How were you sure?

A. It was so revealed to me of my father, and I am willing to obey his will in this thing.

Mr. Speaker. A sign is not only set up to direct the*—— to his own, but to direct others.

A. True; such as will turn to Christ, by this sign to repentance, Christ is come to them: haply some are not able to bear this.

Q. Are there any more signs than yours?

A. I know no other sign. There may be other signs in some parts of the nation; but I am set up as a sign to this nation, to bear witness of his coming. You have been a long time under dark forms, neglecting the power of godliness, as bishops. It was the desire of my soul, all along, and the longing expectation of many godly men engaged with you, that this nation should be redeemed from such forms. God hath done it for you, and hath put his sword in the hands of those from whom it cannot be wrested. That sword cannot be broken, unless you break it yourselves, by disobeying the voice, the call, and rejecting the sign set up amongst you to convince them that Christ is come.

He denied their kneeling to him as was informed.

It is likely the women kneeled as much to others. It is an evil that bears that testimony. It is not true. They gave no worship to me, I abhor it, as I am a creature.

* Here the MS. is unintelligible.

Mr. Speaker. Christ came long since, and you say he is but now come in the flesh.

A. It is well for those that can witness him long since come in the flesh. It is but of late he is come to me; but I say he is again come in the flesh, and he is daily manifested in the flesh; though none can bear it.

As to those words of the woman, *Arise my love, my dove, my fairest one, why stayest thou amongst the pots?* I own it no other way than as it was spoken in the Canticles, of Christ's church.

I am one that daily prays that magistracy may be established in this nation. I do not, nor dare affront authority. I do it not to set up idolatry, but to obey the will of my Father, which I dare not deny. I was set up as a sign to summon this nation, and to convince them of Christ's coming. The fullness of Christ's coming is not yet, but he is come now.

After a great deal more said to this purpose, which I could not take, he withdrew; and the Speaker desired if he had omitted any thing, he would inform him, or if any desired any more questions might be asked him.

Sir Gilbert Pickering offered another question (being unsatisfied) about what his hope was in Christ's merits, and how he prayed to that Christ that died at Jerusalem. Whereupon Nayler was called in again, and answered pretty orthodoxly to those questions, and gave an account of his faith in God and Christ, &c.

Major-General Skippon. Was against calling him in, or asking any more questions, saying, He hath confessed enough to vindicate the Committee, who deserve thanks, for they have been very faithful and painful in the business. It now lies with us, (being fully possessed of the matter-of-fact) not to suffer the honour of God and the truths of the Gospel, to be thus trampled upon. We shall see what judgments will come upon us. God now looks what you will do. Indeed, my heart trembles at those things remarkable, which will follow your remissness herein. I am afraid there will nothing come of this business, and then sin and judgment lie at your doors.

These Quakers,* Ranters,† Levellers,‡ Socinians, and all sorts, bolster themselves under thirty-seven and thirty-eight

* See *supra*, p. 22, *note*. † See *supra*, p. 29.

‡ The *Levellers*, who have probably been misrepresented and unjustly censured by their contemporary historians, are described by a modern writer, as having "comprised a large body of Englishmen, of the finest sense, purest manners, and most enlightened religion."—See "The Principles of the Levellers, 1659," in *Harleian Miscellany* (1810.) vii. 36—46.

The *Levellers* had demanded a new Parliament, chosen by all but paupers and hired servants, and appear to have foreseen, as early as 1649, and only a few weeks before the execution of Charles, what the ambition of Cromwell would attempt. This I learn from a very scarce pamphlet now before me, entitled, "The Hunting of the Foxes; or, the Grandie Deceivers Unmasked: printed in a Corner of Freedome, right opposite to the Council of Warre, Anno Domini, 1649." The authors, four private soldiers, "late members of the army," had been *cashiered* by a court-martial, for having presented a remonstrance to the Lord-General Fairfax.

In this pamphlet, after censuring the "Council of State" as "now about adorning itself with all regal magnificence and majesty of courtly attendance," they thus proceed, (p. 8.) "Yet this is not our new intended king; there is a king to succeed: this is but his viceroy. O *Cromwell!* whither art thou aspiring? The word is already given out amongst their officers, 'that this nation must have one prime ruler, or magistrate, over them;' and, 'that the General hath power to make a law to bind all the Commons of England.' This was most daringly and desperately avowed at *Whitehall*, and to this temper the court-officers are now a-moulding: he that runs may read, and foresee the intent; a new regality!"

Whitlock quotes from "the Levellers" the thirty heads of their "Agreement of the people." Among these are the following: "Parliaments each to stand for one whole year; none to be compelled to fight by sea or land against his conscience; men's persons not to be imprisoned for debt, nor their estates free; men's lives not to be taken away, but for murder or the like; every parish to choose their own minister, and to force none to pay; no estate levelled, or all things common."

These, so unjustly described *Levellers*, probably the only consistent republicans of their time, became obnoxious to the *Powers* in possession. The funeral of "Mr. Lockier," one of their number, "a trooper, who was shot to death by sentence of the court-martial," in 1649, is particularly described by Whitlock, and shows that they had attracted no small

of Government,* which, at one breath, repeals all the acts and ordinances against them.

I heard the supreme magistrate say, "It was never his intention to indulge such things;" yet we see the issue of this liberty of conscience. It sits hard upon my conscience; and I choose rather to venture my discretion, than betray conscience by my silence. If this be liberty, God deliver me from such liberty. It is to evil, not to good, that this liberty extends. Good Sir; discharge your duty to God in this thing, and put the question to agree with the Committee.

Lord President. [Lawrence.] The business before you is of great weight; the House is thin, the time spent. I desire you would adjourn this debate till Monday.

Mr. Ashe, the elder. I hope you are fully satisfied that the matter-of-fact is fully represented to you, so as you may freely agree with the Committee.

Colonel Briscoe. It is very clear that he does assume the peculiar attributes of Christ, though he does it with a distinction of visible and invisible; an evasion obvious to every sophister. But, in the thing, I am very ready to give my vote to agree with the Committee.

Mr. Butler. It lies much upon your hands to vindicate

share of public interest.—See *Whitlock*, p. 385, *Parl. Hist.* xix. 121—123. *Macauley*, v. 6—9.

* "The Instrument of Government," promulgated December 16th, 1653. It contained the following articles, uncommonly liberal, excepting the injustice of tolerating neither "popery nor prelacy," and the assumption that Christians alone could claim that dearest of civil rights, religious liberty:—

"37. That such as profess faith in God by Jesus Christ, (though differing in judgment from the doctrine, worship or discipline publicly held forth) shall not be restrained from, but shall be protected in the profession of the faith and exercise of their religion; so as they abuse not this liberty to the civil injury of others, and to the actual disturbance of the public peace on their parts. Provided this liberty be not extended to Popery, nor Prelacy, nor to such as under the profession of Christ hold forth and practise licentiousness.

"38. That all laws, statutes, and ordinances, and clauses in any law, statute and ordinance to the contrary of the aforesaid liberty, shall be esteemed as null and void." *Parl: Hist.* xx. 261.

the honour of God. This fellow has not only committed blasphemy himself; but, I fear me, he caused many others to commit blasphemy.

The time of discovering this business works much with me; that such an indignity to Christ should be done, sitting a Parliament that professes so highly to the interest of Jesus Christ. Do we not undertake his cause, to manage it against Spain, where his name is blasphemed, and shall we suffer him to be blasphemed at home?

I confess my own weakness and timidity bid my silence; but, I humbly beseech you, make no delay in it. I cannot hold my peace, lest my conscience dog me to my chamber, to my curtains, to my grave.

Mr. Pedley. Put the question, whether what you have heard from James Nayler is not, in substance, agreeable with the Report before you from the Committee, and then proceed to your judgment.

Mr. Speaker. It were best to adjourn.

Sir William Strickland. Nothing has been reported from the Committee, but is, to a grain, agreed by the party's own confession at the bar. I hope you will approve of the way of the proceedings of the Committee, and adjourn the rest till Monday. You have now hell groaning under expectation of this issue, what you will do in this business. I would have us put on courage; and let not the enemies of God have the upper hand, to have liberty to blaspheme his name. It is the cause of God, and ought not to be slighted.

Colonel Sydenham. Adjourn till Monday morning. Nobody has been James Nayler's advocate: but this business ought to be fully debated, whether it is blasphemy. Some will say it is but an error, &c. If you put the question to agree with the Committee, you exclude their votes that would weigh the matter of fact; and haply some may demur to the matter in point of law; some, in matter of fact; so that, in my opinion, you are not ripe for such a question, to agree with the Committee. Again, there are many circumstances and things, of small consequence in respect of the main; will you, in the gross, agree all this to be blasphemy?

Mr. Downing. You are judge and jury. You have heard the prisoner at the bar, and will you leave the business in the midst, after issue joined? Can I charge my memory till Monday with what is fresh in my memory now? Have you not the evidence plain before you, and how can you leave off in the midst of an examination? Are not juries kept without meat and drink; yea, carried from cart to cart, county to county, till they agree in lesser matters,* and shall we break off in this?

Mr. Speaker. I remember what a gentleman in another Parliament said of the result of our long debates, that it was but as the verdict of a starved jury. It will not be so with us; for many members have dined, though others fast.

Mr. Bedford. You should put the question, whether by the evidence you have heard, James Nayler is guilty of horrid blasphemy, and not delay the business further; for it is high time to proceed in a matter of this nature.

Major-General Goffe. I am of opinion with Nayler in one thing, that he is set up as a sign. He has fulfilled a scripture, that false Christs should arise, "to deceive, if it were possible, the very elect." It ought to be a warning to us, to know how we stand. The Scripture is fulfilled saying, "Lo! here, lo! there is Christ; but do not believe them."

The Report helps us well to understand the matter of fact, and what he hath confessed; I would have you, upon the whole matter, agree that James Nayler is guilty of blasphemy.

Mr. Speaker. Do not complicate the question, for he may be guilty of matter of fact, and not of matter of law. You involve all by this means. I would put the question simply.

Colonel Chadwick. The proper question is, to agree with the Committee in the Report; or, otherwise, whether that question should be put.

* That a jury of twelve men should sometimes disagree, in their opinions on the weight of conflicting evidence, could be no improbable case, supposing that each individual juryman should sufficiently consider the obligation of his personal oath. In that case, till they could agree in their verdict, the jury must follow the judge round the circuit, secured, from any other intercourse, in a cart, the only carriage used at the time of the institution of juries.

Major-General Disbrowe. I believe that James Nayler is guilty of blasphemy,* but I shall not hinder your question to agreé with the Committee in the Report.

Sir Gilbert Pickering. It is most Parliamentary to agree with the Report, in parts, and debate it so all along.

Major Audley. It is a gross mistake to agree with the Report in gross. I cannot agree to this; but rather to proceed upon your own knowledge. What you have heard with your own ears from him, may be the ground of your proceeding now; or otherwise to examine it in parts.

Captain Hatsel. The Committee did proceed with much integrity and care, to answer all ends. While I was there, his own answers were sufficient convictions, as to the matters charged against him.

Resolved, To agree with the Committee in the Report.

Resolved, To adjourn the further debate of this business till Monday, and no other business to intervene.

This debate held till almost four, which spoiled the sitting of all Committees;† I question whether it has not left them all, *sine die*, unless some met only to adjourn. I went to look after Committees after five, but found none, only Sir Gilbert Pickering very serious with the clerk in the lobby, copying out Nayler's charge, to be better prepared against Monday.

Monday, December 8, 1656.

A Report for a Naturalizing Bill, read, and resolved to be engrossed.

The House resumed the debate upon the Report in the business of James Nayler, and sat both forenoon and afternoon, and came to the resolutions *infra*.

Sir Thomas Wroth. Seeing Nayler must die, I desire to know what manner of death it must be.

Sir William Strickland. Do not go to the punishment, but go to the matter of fact. First examine that.

* See *infra*, pp. 54, 55. † See *supra*, p. 36, *Note* ad fin.*

The Master of the Rolls. The matter of fact should be stated, whether blasphemy or no.

Major-General Whalley. For my part, I am of opinion that this person is guilty of horrid blasphemy; and we ought to be tender in this, lest we draw this sin upon us.

Major Audley. I think there is no man so possessed with the devil as this person is. I am of opinion, with that noble gentleman that spoke last, that he is guilty of blasphemy; but would not condemn any man upon general terms. I am glad to see such a Christian spirit and sound principle, as in that person that spoke last. God has forsaken him: yet, in matters capital, I would have us go from part to part, and so vote it blasphemy all along as you go. This is the most proper way, in my opinion.

Mr. Nathaniel Bacon. I think it is not so much the possession of the devil. He does arrogate to himself the person, attributes, and what not, of Christ. No man here, I believe, will open his mouth against any part of this charge, but agree that it is horrid blasphemy. I am not for taking it in parts. The Committee is agreed with, who have determined it to be blasphemy. As Major-General Whalley said, take this man's practice and opinion together, and it is apparent horrid blasphemy.

I desire that you would not call into question the particulars again; but put the question, whether you will agree with the Committee, that the matter of fact in the whole is horrid blasphemy, for it is not for your honour abroad to proceed otherwise.

Major-General Disbrowe. We must not proceed without rules; though the offence be heinous enough. We must either take the law of God, or of man, to regulate our judgment herein.

Upon the common sense of scripture, there are few but do commit blasphemy, as our Saviour puts it in *Mark*,* "Sins, blasphemies; if so, then none without blasphemy." It was charged upon David, and Eli's son, thou hast blasphemed, or caused others to blaspheme.

* *Chap.* iii. 28.

But the law of God is more particularly set forth in *Leviticus*.* "He cursed and blasphemed," and was brought before Moses, who instituted the law, that "he should be stoned." The Jews, when they come to charge Christ, say "He is a blasphemer, makes himself equal with God,† and will destroy this temple:"‡ the like charge against Stephen.§

I speak not to extenuate Nayler's offence, but, if we judge by Christian rule, the other persons are more guilty of blasphemy in that sense, than he. They gave him the honour. Yet I will not say but, in the other sense, he is guilty of blasphemy. He is a greater sinner, a vile sinful man; but, to call him a horrid blasphemer, I shall not give my vote. The wretched Jews came to particulars before they went to judgment. It is either by the rule of the scripture, or the law of the land; else how can you judge what is blasphemy. I know no such words as "horrid blasphemy" in scripture.

Mr. Drake. So you will agree it blasphemy, I stand not much upon the word horrid; but do rather insist upon it, in regard the noble person said there was difference of blasphemies. We have gone to particulars already. Did he not suffer himself to be honoured as our Saviour, in his riding through all the towns. What would you do if one should ride triumphantly through the country, as a ruler of the nations? Were not he to be proceeded against as a traitor? I think him worse than all the papists in the world, worse than possessed with the devil. God is jealous of his own name. He has been jealous of your honour, and we shall neither have Turk, nor Atheist, nor Pagan, converted here; and it is now brought to you, either to bring blood upon this nation or to acquit it.

My motion is to vote this offence horrid blasphemy. What does he less than set himself up as God and man both, by his distinction of visible and invisible? All people would kick and despise him, if he should say in plain terms he were God or Christ, but he does as much in effect as say so. I have heard of Herod, but this is worse than he; for he makes

* *Chap*. xxiv. 11. † *John* x. 33. ‡ *Mat*. xxvi. 61. § *Acts* vi. 13.

himself to be the Christ, and to dethrone our Lord and Saviour. Does not he assume the honour and names, titles and attributes of Christ. If he should say it in plain terms, none would believe him; but he insinuates as much to the full, both in gesture, &c.

Lord Strickland. This fellow is one made up of contradictions. The Quakers teach humility, but he exalts himself. I doubt he is but too bad, yet I do not believe (by what I have heard,) that he did say he was Jesus or Christ, though I think the women do believe him to be Christ.

I never heard of any man given up to so high a delusion, to so much pride and arrogancy, as this person instanced in his pleasant answer to his being the fairest of ten thousand. I believe he is under the saddest temptation of Satan that ever was; but I believe he does not believe that he is the only Christ, that died at Jerusalem, or that the essence of Christ is in him; but I fear he cannot distinguish of Christ's being in him. I think his opinion is little else than as that of John Baptist, a forerunner of Christ.

In all these respects, I look upon him as a man exceeding scandalous, proud, and sinful; but to say he is a blasphemer I cannot agree. He does not blaspheme God. He says he honours God wherever he finds him. He nor curses nor reviles at God. I believe he is one of those that would sit on the right or left hand of God. He has no evil spirit or malice in him against God; but he is under a sad delusion of the devil. By that means, perhaps, he might have been excommunicated. He believes that more of Christ is in him than in any other creature; but he showed no malice to Christ, or envy.

If you have any rule, I would have you proceed against him as a seducer, and to let none be allowed to come to him: to shut him up as one that has the plague upon him. Haply you have some persons here, that will find you out a law to secure him from doing any further hurt; to act rather as a magistrate than by another power, whereby you have not a rule to proceed.

But for us to judge of blasphemy, unless we were so learned

in the original as to define what is blasphemy, lest we be judged abroad whether we be adequate judges in this case of blasphemy, send him to Biddle in the Isle of Scilly.*

Lord Whitlock. I cannot but dissent from the gentlemen that have opened it to be blasphemy. I think it is an offence of a higher nature. I know blasphemy in scripture is defined to be sin. But to assume these titles and attributes of

* John Biddle has an interesting article by Wood in *Athenæ Oxonienses.* He was born in 1615, and entered a student of Magdalen Hall, where he proceeded M.A. in 1641. The same year he was chosen master of the Free Grammar School at Gloucester, "upon ample recommendations of the University." There, notwithstanding his acknowledged learning and exemplary moral and religious character, he was persecuted by those inconsistent asserters of liberty the *Long Parliament,* at the instance of the *Assembly of Divines,* for his anti-trinitarian writings. "The Magistrate and Parliament Committee," says Wood, "committed the author, then labouring under a fever, to the common gaol." He was soon released, but cited the next year to London, where he was imprisoned for five years, till 1651.

It appears by the *Journals* that Biddle was brought, in 1654, before the Protector's first Parliament, for writing against the established doctrine of the Trinity. After various sufferings, especially in Newgate prison, he was banished in October 1655 to the Isle of Scilly, "there to remain in St. Mary's Castle, in close custody, during life." It appears that "the Protector allowed him a hundred crowns per annum for his subsistence."

In 1658 Oliver suffered Biddle to return, at liberty, and he appears to have been befriended by the Protector Richard. He was, however, after the Restoration, again committed to Newgate, in June 1662, and died in September, in his 47th year, "by the filth of a prison in hot weather," says Wood, "contracting a disease." The Oxford biographer bears the following testimony to the merits of this injured scholar, who was an intimate friend of that eminent philanthropist Thomas Firmin.

"He had in him a sharp and quick judgment, and a prodigious memory; and, being very industrious withal, was in a capacity of devouring all he read. He was wonderfully well versed in the scriptures, and could not only repeat all St. Paul's Epistles in English, but also in the Greek tongue, which made him a ready disputant. He was accounted by those of his persuasion a sober man in his discourse, and to have nothing of impiety, folly, or scurrility to proceed from him; also so devout, that he seldom or never prayed without being prostrate on the ground."—*Athen. Oxon.* art. *Biddle.* See also *Brit. Biog.* vi. 79. *Biog. Brit.* ii. 302.

Christ is more than blasphemy. He calls the saints his brethren, so did Christ himself say. The Committee did well to add the word 'horrid,' but this is a particular offence, which cannot be said what it is, but by expressing the offence itself.

But to the manner of your proceedings. I have not found that the Parliament hath given judgment in any matter where there was not a law before. They have not proceeded in that case, but by Act of Parliament.

To give a judgment in point of life, no law being in force to that purpose, my humble opinion is to go by way of bill. To order a bill to be brought in with a blank for the punishment, where the grand Committee, if you please, may appoint the punishment, and by this means you have others to join with you in your legislative power. The like case was the Bishop of Rochester's cook, who, by Act of Parliament, had new punishment appointed him, (i. e.) to be boiled in a hot lead.* Hackett's case was otherwise, for he set himself up as a king.†

By a bill of attainder, this bill may be brought in, and the party heard; which will certainly be your best and readiest way, and most agreeable to the sense of a great many of this house.

Major Beake. I conceive you ought first to determine the offence, what it is; and then prepare a proportionable punishment, which you may do then by a bill.

I conceive the judgment of Parliament is so sovereign, that it may declare that to be an offence, which never was an offence before. The Roman senate did the like in cases of parricide.†

* Poisoners were boiled to death, till 1547, when they were adjudged to suffer as other murderers. See *Parl. Hist.* iii. 230.

† See Camden's *Elizabeth,* Anno 1591.

‡ According to historians, the first instance of parricide occurred in the year of Rome 652, B. C. 102, when Publicius Malleolus killed his mother. "The criminal was sewn up in a leathern sack, with a dog, a cock, a viper, and an ape, and so thrown into the Tiber. A new kind of expiation was also practised, which consisted in loading a goat with

I have read some counsels for ordinances and acts of Parliament that have positively defined what is blasphemy. I wonder it should be so questioned here as to hedge out every man's knowledge in this matter. The word of God is express and plain in it. I can produce you very good authors confining it to these limits. It is a crime that deposes the majesty of God himself, *crimen læsæ maiestatis*, the ungodding of God. And if we cannot reduce it to this, I desire that he should not be punished. He assumes Jesus instead of James.

Holy, holy. These are attributes properly belonging to Christ; doing miracles, raising the dead.

I would have the Report read over, that it may be fresh in every man's memory. If it be so that he has assumed these attributes, why should it stick in your hands to determine of it?

You agree lesser sins to be blasphemy, and why do you stick to call it horrid blasphemy. I know not yet what will be an adequate judgment, or punishment, nor is it proper to determine it yet.

Captain Baynes. If you proceed by laws now in being, it is one thing; but, otherwise, you must make a law for it, else how can you do execution in this matter. Then you must go upon the legislative, wherein my Lord Protector must have a negative. We may bring him into a snare unless he heard the matter. His opinion may stick and demur as to the offence; for the *Instrument of Government* says, all shall be protected that profess faith in Jesus Christ,* which, I suppose, this man does. If you declare it to be such an high offence, and have no punishment in the case, what better are you. If you have laws in being, then send him to some of your Courts of Justice.

the public execration, and then driving him out of Rome through the gate called *Nevia;* a ceremony which seems to have been borrowed from the Jewish religion." *Roman Annals,* (1760), p. 335.

* See *Supra,* p. 50.—*Note.*

Colonel White cited the proviso in the Article of Liberty, holding these principles out to civil injury.

I propound it to you to proceed against him as an actual disturber of the public peace, by abusing his liberty. Haply, you may find a lesser punishment than death, which may discourage him, and the generation of them.* I question whether the power of the Parliament can put a negative upon any part of the Government.†

Mr. Downing. You have voted the Report, in the gross, to be fully proved; so that if there be any thing of blasphemy in the Report, it is blasphemy in the gross. If you go to particulars, you will never come to an end; for then, whether will you proceed upon his confession at the bar, or upon the Report? His being possessed with the devil is no extenuation of the offence, but as introductory to the offence, as in a case of an indictment.‡

I am not against a bill, but something must be voted first, as to the matter-of-fact, else what shall your bill be called, or how will you proceed?

Blasphemy so taken, in general gives the more reason to pass this vote, for the greater comprehends the lesser. Cursing of God is treason, but the making ones-self equal with God or Christ is treason, blasphemy, with a witness! assumes the incommunicable attributes of God and Christ, and suffers adoration as God and Christ. This you have voted already.

No offence can be higher than treason, none higher than blasphemy. Let us not lose this word, lest we have none.

Observe how careful they are not to give honour to any authority. You saw how he behaved himself at the bar. Not a cap to you, though you be gods in one sense; yet he will take cap, knee, kisses, and all reverence. His distinction of visible and invisible makes his blasphemy plain.

God manifested and come down in the flesh, at Exeter, in

* The Quakers. † The *Instrument of Government.*
‡ Where the crime is attributed to "the instigation of the devil."

James Nayler! Did not he say, that where God appoints Christ his honour, there he must be honoured. If thus come down, we ought all to go and worship James Nayler. How did the Jews and Rabbins interpret blasphemy? Not the cursing of God, but the making himself equal with God. Christ never denied it to be blasphemy to make ones-self equal with God, but he stood upon it that he was. If this be the case of this man, shall you not vote it blasphemy?

It is brought to you, sitting the Parliament. If it had been brought to his Highness, I am confident he would have been zealous in it, and extended the laws.

We have made a law against treason, upon earth, to be tried without Juries.* I gave my vote for it. It was just. If there be such a thing as treason against Heaven, if I be not most zealous in this matter, let my tongue cleave to the roof of my mouth.

There was no law against blasphemy in the Scripture, till one committed a fault. He did not escape that offended, and he was the occasion of a good law. You have made laws in lesser matters than this.

As to the *Instrument of Government*, I hope it shall never be made use of as an argument to let this wretch escape. I am as much for tender consciences as any man; but I deny that this has any share in such liberty. Does this man profess faith in Jesus Christ? Nothing! He destroys and disannulls the power of Christ, and sets up himself only with a distinction of the invisibles. God could have made him a pillar of salt immediately, if he had pleased; have struck him dead, but he has left it to you to vindicate his honour and glory. Now see what you will do. This is the day of temptation, and trial of your zeal. I can call this offence no less than blasphemy. I desire you would vote it so, and then to speak of a bill for his punishment.

* March 26th, 1650. An Act passed, establishing "An High Court of Justice within the Cities of London and Westminster, and the late lines of communication."—*Parl. Hist.* xix. 253, 254.

Lord President.—This gentleman has spoken very zealously, yet they were honest men, too, that called for fire from heaven, and we know how they were reproved.*

I have lived some time in the world, and seen what is abroad, and how careful wise men have been in proceeding in this kind.

I wonder why any man should be so amazed at this. Is not God in every horse, in every stone, in every creature. Your Familists † affirm that they are Christed in Christ, and Godded in God.

This business lies heavy upon my heart. Imprudent persons run away with these notions, and not being able to distinguish, sad consequences arise. But this is but from the abuse of good, sound, and high notions, and thence they argue liberty of sinning. Some look upon this as a bridge to bring them to this perfection.

If you hang every man that says, *Christ is in you the hope of glory*,‡ you will hang a good many. You shall hear this in every man's mouth of that sect, and others too, that challenge a great interest in Christ.

I do not believe that James Nayler thinks himself to be the only Christ; but that Christ is in him in the highest measure. This, I confess, is sad. But if, from hence, you go about to adjudge it, or call it blasphemy, I am not satisfied in it. It is hard to define what is blasphemy. I believe you think Arianism is blasphemy; and so it is, to deny the

* *Luke* ix. 55.

† They appeared in Holland, about 1555, and in England in 1580. Their founder was Henry Nicholas. They "named themselves," says *Camden*, "of the Family of Love, or House of Charity. They dispersed books, translated out of the Dutch tongue, which they intituled, 'The Gospel of the Kingdom: Documental Sentences: The Prophecy of the Spirit of Love: The Publishing of Peace upon Earth; the Author H. N.' The Queen," (employing one of the clumsy expedients of that age, for suppressing opinion,) "commanded by proclamation, that the said books should be publicly burned."—See Camden's *Elizabeth*, (1675) p. 248.

‡ *Col.* i. 27.

divinity of Christ; but this is to themselves, about the notion of God. This is not to us.

It is the happiness of this nation that every mother's son should know Christ. But I doubt there are many in this nation that pass for Christians, that know not the mystery of Christ manifest in the flesh. I have discoursed with some of that sect, and have read some of their books, that every man had a light within him to bring him to Christ; and that the first creature that God made was light, (i. e.) Christ; which is a fallacy, for Christ was not created. Their bottom is much tending to Arminianism, and I would have the venting such principles restrained. I shall say nothing to the punishment now; but have you read the Report over, and let every man give his reasons why such a part is blasphemy?

Major-General Skippon.—By the rule that this honourable person offers, none shall meddle at all in matters of religion. I cannot agree with him, in that Providence has brought this offence to your doors. We ought to be careful how we draw down national judgments by passing it by. There may be errors in our zeal on both sides. The question will come, whether you honour more the things of God or your own things. I would not willingly weaken one stone of the Government, but rather be a means to establish; but the 37th article* was never intended to bolster up blasphemies in this nature. I have heard it otherwise. This may admit of your future explanation. I hope I offend not. I may haply offend man.

I beseech you, consider how this comes before you, consider what it is when it comes, consider the chair you sit in. I am still of the same opinion I was; nay, I am more established, being convinced of my own conscience, and your duty, that you ought to agree with the Committee, in the gross, that it is blasphemy, horrid blasphemy. If it be more, as some gentleman has said, let that be further considered. God's glory has been trampled upon sufficiently in these things. Voting it to be horrid blasphemy is my humble opinion.

* See *supra*, p. 50, *note*.

Sir Gilbert Pickering. I did not hear the lord that spoke last but one, say any thing to take off your hands in this matter. He reserved his judgment as to the punishment. It was a jealousy of Major-general Skippon, without a foundation. His speech was all along otherwise. It seems, as it is laid before you, it is now with you to consider whether you will mind more the honour of God or your own honour in this business.

If this gentleman thinks it is blasphemy, and thinks it ought to be punished with death, he must give others leave to dissent, if their judgments will not agree to it. Some haply have the same zeal for God, yet haply they may not have the same appetite to give sentence in these things, without special tenderness respecting the sad consequence. If I were of that opinion, that this offence amounts to blasphemy, I should not stick to say so; but give me leave a little to understand whether this be that blasphemy which was first committed. Which of the sorts of blasphemy that was, I am truly ignorant, not affecting ignorance herein, whether it was cursing God, or, I doubt, a higher offence rather. If you lay an interpretation upon the Rabbin's definition of blasphemy, you will wholly frustrate the word of God. (Instanced their interpretation of the word *Corban*)*.

I am at a stand what to call this offence. It does highly return upon God to his disgrace, &c.; but to determine it blasphemy, I confess I am ignorant in it.

It is a gross, thick, dark idolatry in the persons that followed him on horseback: they are not only equally but more guilty in this business than himself. But the proper proceeding is, as to what is done by the person himself; wherein you ought to take as well what he said for himself, as against himself, as that question which he answered upon his second calling in. I thank you for it; I was much satisfied in it. He did admonish the people to take heed what they did, and to do nothing but what God commanded them; and repeated his answer to the last question. I would have this to be

* *Mark* vii. 11.

used as an extenuation. Mr. Seldon* said upon Best's† answer, at your bar, that he was a better man than he understood himself to be. That may be this man's case. He gives himself not out, plainly, to be the son of God, but that he is a prophet, a type, a sign, to warn men of the second coming of Christ, and thus he argues: "'If any man see more in me than in another, what have I to do to resist what is the Father's will."

My present apprehension, in short, is this, that the person is both a flat idolater, and idolatry itself. I am ready to give my sense in it, as to the punishment of this, but to give my vote for blood I shall be very tender in it. Haply, some will say I am fallen from the faith. I speak my conscience, the will of God be done in it.

Mr. Rouse. If it be agreed to be idolatry, I think it is enough. You have spent a forenoon to consider what to call it. I think this will be sufficient to bring him to what punishment you shall think fit.

It was the idolatry in that person, that was in the same person punished. Those that worshipped him were not the offenders; but the idol was pulled down, the person that suf-

* Unanimously chosen one of the representatives for the University of Oxford, in the Long Parliament. He died in 1654.

† Paul Best, in whose case the Long Parliament designed the injustice of an *ex post facto* law; which, however, does not appear to have passed. Whitlock, among other notices on this subject, has the following:—

"1646, January 28. The House ordered *Best* to be kept close prisoner, and an *ordinance* to be brought in, to punish him with death. July 24th. Order to burn a pamphlet of Paul Best's, and the printers to be punished."

That virulent foe of Toleration, the Presbyterian Thomas Edwards, the *shallow Edwards* in Milton's sonnet, speaks of "Paul Best's damnable doctrines against the Trinity," and denounces two "Independent Ministers" in the City. Of these *lights shining in a dark age,* one had declared that Paul Best's "imprisonment would do no good," that he should be made "to sweat with arguments," but that the magistrate had "no authoritative power under the Gospel to remedy it." The other said, "that the magistrate might not punish such," and "had nothing to do in matters of religion, but in civil things only."—See *Gangræna,* ed. III. (1646.) p. 46.

fered such worship to be done unto him. For my part, I think, call it what you will, it is an high offence and encroachment upon the honours of God, and ought to be punished, as blasphemy, or idolatry. Either way will meet with the offender, in the same end as is propounded to you.

Sir William Strickland. This debate is likely to hold some time. I desire you would adjourn for an hour or two, and take it up again, that it may bear its weight with it.

Resolved That this House do adjourn till three o'clock upon this debate.

We met in the Army Chamber, and adjourned the Committee for the courts at York, till Wednesday, at two.

In the afternoon, near four.

The order for adjournment was read.

Mr. Speaker said, you have heard the order.

Silence a pretty long while, and the question called for.

Mr. Speaker said, he could put no question unless to adjourn again.

Mr. Nathaniel Bacon. The question in the morning, which was firsted and seconded, was to agree with the Committee, that Nayler's offence was horrid blasphemy.

Sir William Roberts. If you would put the question, you should not say, as the Committee called it, "horrid blasphemy;" but, if you will put it horrid blasphemy, put it.

Sir Gilbert Pickering. I brought in a petition, which was the order of the day. I desire that might be read.

Colonel Rouse and *Sir Thomas Wroth.* The proper question is what you should call this offence. Would have you put the question, if it be horrid blasphemy.

Mr. Speaker. There were several questions before, about the way and manner of your proceedings, whether by the legislative or judicatory, besides this question.

The Master of the Rolls. I have heard this debate, and, in my opinion, it was very learnedly debated. I never heard

of such a horrid sin, as this, in all my life. Some would have it idolatry; some, blasphemy of one sort; some, of another sort. It is not the matter what he said here; but his carriage before this judicature is most remarkable with me. He does not disown this honour here to Christ in him.

That of setting himself up above ten thousand* was blasphemy, insinuated as highly as could be.

Consider how you stand in the opinion of the world; what an ill construction is upon us from the malignant party. They will say you have had one before you for calling himself Christ, and done nothing in it. Consider Paul's case, how he denied any honour to be done to him by the barbarians.† Is there more of the Spirit in him than in Paul. Yet he sets up himself, as one to be worshipped. It is flat idolatry, both in him and in those that follow him. Call it little or great blasphemy, it is blasphemy if it be but a grain.

I would have the question put, whether James Nayler be guilty of abominable idolatry and damnable blasphemy.

Mr. Highland. We have a saying in our country, 'Give the devil his due.' The poor man is bad enough, we had not need to add. Does he deny either God, or Christ, or the Spirit? Lay no more stress upon it than it deserves. It differs from Paul's case. He is much filled with spiritual pride, that he has more of Christ in him than another. The women said they did not honour James Nayler, but the Lord.

I hope you are not of opinion that he should suffer death for this, though it be a heinous offence. Labour, if it be possible, in a peaceable way, to reclaim those that are misled by his delusions; for, I suppose, we all agree it to be a great and horrid crime. Yet, from the whole, to judge it blasphemy, I conceive it is not proper, nor can I give my *yea* to it.

Mr. Bedford. You have lately had the offender before you, and you are now debating what the offence should be. I would not have it made more than it is. It appears bad enough to me, so that I think it comes under whatsoever has been offered to you, (i. e.) both idolatry and horrid blasphemy.

He has owned the names, attributes, titles, power, and ho-

* See *supra*, p. 46. † *Acts*. xiv. 14—18.

nour of Christ: he has assumed them all. He will not tell you where Christ is, or that he is on the right hand of God. Yet he came down fully in the flesh, at Exeter, upon him: he takes that.

The Long Parliament tried Hacket, because he said he was the King of Saints; and the crown ought to be set upon his head, and this by your legislative power.

He has robbed God and Christ of his honour. I can call him no less than a traitor in that. I desire that the question might be, that James Nayler is a horrid blasphemer.

Mr. Bacon. This fellow is not the fairest of ten thousand, as his disciples would have him, but the foulest of ten thousand rather. It is much controverted here, whether a law may be made for a matter, *ex post facto.* Nothing more ordinary in a Parliament. Was it not the case of the Bishop of Rochester's cook. He made broth which poisoned all the family, and the beggars at the gates. Here was a law made, both for the offence, and the punishment.*

The like in Hacket's case.

The like in the Holy Maid of Kent's case, Hen. VIII.† who said she had immediate intercourse and letters from the Virgin Mary. Her offence was adjudged high treason.

Resolved, That candles be called for, ‡ two Noes.

Colonel Sydenham. Here are several things before you, of several natures and kinds; some against God immediately, some against the civil peace, some against manners and honesty.

I look upon it, in the whole, as a laying a ground to overthrow the Gospel. If so, our labour is in vain.

It is a confounding of Christ and his attributes.

It is against the civil peace; for, by this rule, we must lay aside all civil submission to any supreme power, and throw down the sceptre at Christ's feet, wherever we find him reigning, though in this impostor. Another against common honesty, as his lying with the woman, the curtains drawn, &c. Will you confound all these crimes under such an improper

* See *supra*, p. 58. † *Anno* 1534. ‡ See *supra*, p. 36, *note*.

title as, in the gross, to call it blasphemy. This offence is not homogenial. It differs from that offence of the Holy Maid of Kent. The Parliament did justly declare that to be treason.

If this should be taken as a blasphemy upon the whole, it would be left as a record to posterity.

I cannot be in the world but I hear some of their opinions, both in print or otherwise. These Quakers, or Familists, affirm that Christ dwells personally in every believer. That which I fear, is, to draw this down into precedent, for, by the same ground, you may proceed against all of that sect. Again, that which sticks most with me, is the nearness of this opinion to that which is a most glorious truth, that the spirit is personally in us. The precedent in this case will be dangerous to posterity. I submit it to you whether you should not go upon the whole matter of fact, which is the most natural way of proceeding.

If some of those Parliaments were sitting in our places, I believe they would condemn most of us for hereticks. The most safe way is to go upon the whole. Who can tell what may be the spirit or temper of other Parliaments? We should be in this more unanimous, and come sooner to the question. It is for your honour. I fear this long debate will make them without say, one half of the House are Quakers, the other half, anti-Quakers.

Sir Richard Onslow. I am glad to hear of any thing that will shorten your time. I shall not undertake to define what blasphemy is, but I can describe what this is. My opinion is, as it was, that it is blasphemy. There is *officium altior officio*. It is our duty, with a witness, to do something in this business, and that with all possible zeal. I cannot tell what to call horrid blasphemy, if this be not it. Have not Parliaments, in all matters of this extraordinary nature, had recourse to their legislative power, and have given titles to offences, and new punishments adequate. Why should you boggle at this? My motion is, That it may be voted horrid blasphemy.

Mr. Briscoe. You have voted the Report, which is the

ground and substance of the crime, so that I think you need not long contend what shall be the title. If the Report were not full enough, my judgment is from his own acknowledgment, that he assumed, or connived at the receiving, the honour and attributes of Christ; *consentiens* and *agens* in law, are *pari gradu*. He confesseth it to be evil to give adoration to him, but, God commanding it, he durst not refuse it. By this means he lays the sin and evil upon God, if it be a sin. If not, then it is a real truth that he ought to be worshipped as a God.

"Hope of Israel stands." This must be a peculiar person, more than ordinary, in whom this hope stands; for by Israel certainly must be meant all believers, and by Hope must certainly be meant Christ. It can stand in no other person.

Acceptance of the woman's salutation. "Arise, &c. My love, &c." To me this seems a plain owning the honour due to Christ. He never reproved them for giving it, but said they might obey what the Lord commanded them.

We have no law against blasphemy under the Gospel; yet the *jus naturale* is of force. It is an offence against the moral law. By the light of nature, as divines say, we may know the Deity.

If against the judicial law, the equity remains. It is a sin against a greater light, a more transcendent light. If ignorance doth extenuate, so doth knowledge aggravate; and the greater his knowledge the greater his offence. He owns it knowingly.

The circumstance of time works much with me. It is our duty. If we neglect it, let us consider Eli's judgment. *Qui non vetat, jubet.* That it should come to our doors in this juncture of time!

The spreading of it in England and Ireland, and other plantations, appears to me to proceed from some encouragement it hath. I would have us, however, bear witness against it.

This is a spiritual judgment and wickedness amongst us.

We draw guilt upon us. We know what Phineas did* in such a case, and what was the consequence :—the plague was stopped. Let us obviate these evils, meet them in the threshold. My motion is, That you would vote James Nayler to be guilty, upon the whole matter, of horrid blasphemy.

Major-General Disbrowe. The great business before us, this day, is to consider which way we may proceed according to knowledge. Our zeal is hot enough, as it was in former times with the Israelites. All the difference is about the manner of expressing it. I would have us as unanimous as may be. We are now waiting upon God for the issue. I shall not need to aggravate it. It has been sufficiently done. We are left to our rules in this case, and herein we differ. Sharp punishments are denounced against blasphemers; but this way is not revealed to us. We all agree it to be a most horrid crime.

Blasphemy is taken in divers senses in scripture. I do really believe that this man is guilty of blasphemy in one sense; but I have not heard one scripture urged this day, that this offence is comprehended under this or that rule or text touching blasphemy.

It is such a leprosy that ought to be shut out from all others. So far I can agree.

You heard in the gospel, of false Christs to arise; but no judgment is passed upon them, but only to bid us take heed of them, beware, and the like.

The work of a magistrate is distinct from every private person. He ought to take heed that such persons do not infect others. This offence is horrible enough as to God; but as to the civil magistrate, how shall he be guided in this case?

But I do not see how it answers, either the rule, or the law, or the gospel, to call this offence, as is offered to you, horrid blasphemy.

Where the law of God and law of man is silent, I never heard it in a Christian commonwealth, to condemn any man

* See *Numbers*, xxv. 7, 8.

in that high nature as is offered. You may witness against them as far as you can by a rule. I would have you vote that James Nayler is guilty of horrid crimes, and to take it in gross as was offered to you by Colonel Sydenham. You will effect the end we all aim at. Enumerate, if you please, blasphemy, heresy, idolatry, and that he is a seducer and an impostor. I believe he is all this; but to vote it horrid blasphemy, I cannot consent to it.

Mr. Bodurda. A man had need premise something of himself, before he say any thing in this business. I cannot agree, from the whole, to call it horrid blasphemy. I would have any man lay his finger upon any part of the charge, and say this particular is horrid blasphemy. If this vote pass, and any without ask me, what have you called this offence? how can I convince them, from any part of it, that it is such an offence as you have voted it.

When have you passed any such vote as this in the gross? I would fain know how I shall answer this objection. I cannot pretend to any skill in the original tongue. Thus much I remember of Greek Βλασφημία, *defamatio*, a pertinacious holding of heresy. You have not any such part of Nayler's offence before you, which he hath pertinaciously persisted in. The proceeding of the church in this case ought to be followed, who heard a heretic three or four times before they passed sentence. Either you must proceed upon what was proved against him, or what he confessed. His riding into Exeter was a horrid piece of pageantry and impostery, but how to call that blasphemy in him I know not.

Upon the account of the Millenaries,* I look upon this of Nayler's crimes, I am very much troubled. I would have the growth of them suppressed, for they are a dangerous generation, and certainly much influenced upon by this sort of Quakers.

In 2d *Eliz.* John Moore said he was Christ, and William

* These were, probably, some who followed, in England, the opinion which Ross, in his "View of all Religions," attributes to the Church of Arnheim in Holland, "that within five years Christ was to come in the flesh, and reign on earth with his saints a thousand years."

Jeffrey did so worship him. They did not evade, but were plain and express in their opinions. Divines had him under consideration, and could not convince, but he stood in it that he was Christ. They sentenced him to be whipped from the prison to Bedlam, where, remaining some time, he confessed his imposture and cheat.* Before you vote it any thing, I desire you would take it in pieces. Otherwise go to the punishment first, lest you debar a great many votes that would concur in the crime, but for the consequence of the punishment.

Colonel Gorges. I would demand this question of these gentlemen :—Is there such a thing as blasphemy? Consider what he said at the bar. He said the voice, the spirit, that spoke in him, were the words of Christ. If he be infallible, then let us worship him. If fallible, what is that less than blasphemy to own such a spirit in him. His practice is idolatry. His excuse is, Christ is within him. He makes an idol of himself; and ought not an idol to be dashed in pieces? He never reproved his disciples, nay, rather encouraged them,

* "1561—The 10th of Aprill was one William Geffreie whipped from the Marshalsea in Southworke, to Bedlem, without Bishopsgate, of London, for that he professed one John Moore to be Christ our Saviour. On his head was set a paper, wherein was written as followeth: '*William Geffreie, a most blasphemous heretick, denieng Christ our Saviour in heaven.* The said Geffreie being staied at Bedlem gate, John Moore was brought foorth, before whome William Geffreie was whipped, till he confessed Christ to be in Heaven.

"Then the said John Moore being examined, and answering overthwartlie, was commanded to put off his cote, doublet, and shirt, which he seemed to doo verie willinglie, and after being tied to the cart, was whipped an arrowe's shot from Bedlem, where, at the last, he also confessed Christ to be in Heaven, and himselfe to be a sinfull man. Then was John Moore sent againe into Bedlem, and Geffreie to the Marshalsea, where they had laine prisoners nigh a yere and a halfe, the one for professing himselfe to be Christ, the other a disciple of the same Christ."—*Hollingshed*, iii. 1194.

This passage may serve to contrast the wise and humane treatment of the insane, now peculiarly encouraged, with the ignorance and cruelty formerly displayed towards that afflicted portion of our race. Bedlam, long a receptacle for lunatics, was then on the spot since called Old Bethlem, and, very lately, Liverpool-street.

to obey the command of God, &c. My motion is, that it may be called horrid blasphemy.

Sir John Reynolds. If you agree not what shall be the crime, how will you agree in the punishment. I would have you defer it for a time, and take the advice of some able divines about you. The long Parliament did so in these cases. Your time, in appearance, is short,* and many weighty businesses before you, &c.

Dr. Clarges. I thought you had been so near a question that I should not have needed to have troubled you. You have here before you the greatest matter that ever came before a Parliament. This impostor hath not only poisoned himself, but too many others. I have made some collections, and I have a bad memory; I crave your pardon if I read my notes.

Blasphemy defined in three things.

Question. Whether blasphemy and cursing be not two distinct things? "They came to Christ, they mocked him," 22 *Luke*, one blasphemy.

"A knowing and an ignorant blasphemy," (1 *Tim.* i. 2.) "I was a blasphemer," said Paul. "I did it incuriously."

"Whoever shall set up a sign," (27 *Deut.*) he is an idolater, and has not Nayler set himself up so.

If any of these people had a mind to adore the invisible God, they need not flock about James Nayler. He owned the letter wherein he was called Jesus. His relation of the manner of his going into Exeter very much confirms me that he assumed the honour done to Christ, when he was upon the earth. He rebuked none of them for it. "My father," not mentioned in any part of Scripture but in Christ's person, yet this impostor assumes it.

In my opinion James Nayler is guilty of horrid blasphemy; what greater expressions of it than to assume honour as to a Deity, though invisible.

In murder, a man destroys, as much as in him is, the seed of mankind: blasphemy much more. Perjury destroys a man

* See *supra*, p. 42, *note*.

in the same sense by consequence in his life, and it perisheth society.

I shall speak no more; but let us all stop our ears, and stone him—for he is guilty of horrid blasphemy: nothing so apparent.

Major-General Disbrowe. You should put the word blasphemy distinctly. If it be simple blasphemy, I can freely give my *yea* to it; but if blasphemy in the restrained sense, I shall be against it: both in respect I understand not how the offence will amount to it, nor what the punishment may be. I would not have any here be surprised in this vote.

Mr. Margets. It is surely obvious to you, that there is a different sense in the House, what kind of blasphemy this shall be called. I would have you put the question whether it shall be put or no, and so determine it.

Sir William Strickland. I hope the more you hear of this, the more your ears tingle at it. Here is no ignorant person before you. Did he not own the honour due to Christ? Did he reprove those that gave him that honour? Did he not rather excuse them by laying the sin to God's charge? for, said they and he both, "God commanded it."

He that puts himself in the place of Jesus Christ, and sets himself up above Christ, all other things are but mint and cummin* in respect to this. Let us not betray God Almighty. The report was made very justly and faithfully. I am of opinion that it is blasphemy, nay horrid blasphemy, and I desire you will put the question.

Colonel Jones. You should instance in some part of the Report that makes it blasphemy: as his assuming the attributes of Christ, lest after-ages take another thing for blasphemy in the Report, than you judge him upon.

Colonel Clarke. I take this person to be under a very high delusion, strong and devilish delusion, that has tossed him up and down in the world. I take it not to be under any designed malice or wickedness, and if so, you cannot call it blasphemy. I shall be as ready as any man to bear my

* See *Mat.* xxiii. 23.

testimony against him; for I take him to be the greatest impostor that has been in our days.

I would have the question put, that he is a notorious impostor and seducer of the people.

Mr. *. If you consider the number of them abroad, you would apply some speedy remedy; for that they are seduced is apparent enough. I have heard of one that was strangely deluded by this person, and he came off from them. The like of Sedgwick† in Hertfordshire. If it were not to reach his life, I believe a great many would be free in this vote.

I know not whether it is knowledge or what it is, that puffs him up. This opinion of his does border upon a very glorious truth. I would have us very tender as to what name you give it; lest, by the words "horrid blasphemy," many be drawn in, to vote what their mind is not; that may be of ill consequence.

Major Audley. I was not for passing this matter in the lump, but *in censu diviso.* It was well offered to you, to send some divines to undelude this man, if it be possible; to try this delusion. I cannot agree with voting this, horrid blasphemy. There is something else which will follow, wherein haply I shall not agree. His matter of opinion sticks not so much with me as his matter of practice. I doubt others have deceived him, as well as he hath deluded others.

If you make blasphemy a generical sin, it must consist of particulars.

You christen this offence like *Diapente,* five ingredients, and that the least of them; yet you will give it denomination from that drug, and out of the whole extract a name for the offence.‡ I submit it to you whether this will look well in after ages, or

* Blank in MS.

† Probably William Sedgwick, named by Wood among the Oxford writers; and, for having ventured to foretel the day of judgment, which he survived, called *Doomsday Sedgwick.* He was ejected in 1662, from Ely. Calamy describes him as a "pious man, with a disordered head."

‡ This speaker, in his allusion to a well-known drug, named from two Greek words, has, if correctly reported, not employed very clear language.

no; to condemn one upon such an accumulative and general account, without distinguishing the parts and particulars, to make it up.

Colonel Mathews. In my opinion James Nayler is guilty of horrid blasphemy. I would have added to the question: that he is a great impostor and a seducer, which will answer all senses.

Mr. Robinson. I am against the word *horrid* in your question. I wish it could have been tried out of doors. Spare that word, and I shall not be against the question. I wish any could assign to me, from what part of the Report you ground your judgment upon, that this is horrid blasphemy. I do not find the scripture so clear in it what it is; instanced in that of Job's wife. *

This word spared, I can the better tell how to give my opinion as to the punishment; that he may no longer pester the nation with these poisonous principles.

Colonel Shapcot. Put the question whether the word *horrid* should be part of the question, and this will determine the debate and save your labour.

Mr. Speaker. Agreed.

Lord Claypole. A word or two before your question. It is a great many more's concernment than James Nayler's case. In other debates you make the title last. I would you observed this rule in this also. Admit you leave out the word *horrid.* If he be only guilty of blasphemy;—if you extend not a proportionable punishment, how strangely will this look upon your records. I would have the parts read over, and debate it along, what is blasphemy and what not.

Mr. Ashe, the elder. If any man speak to this business now, it is against the orders of the House, not to keep to the Question, which is, whether the word *horrid* shall be in the Question. Keep close to that which is your proper work, else you will go contrary to your orders.

He might have taken Lord Claypole down, and at first, if he durst.

Major-General Howard. I thought not to have troubled

† See *Job* ii. 9.

you in this business; but you are launching into a matter of great consequence. Whatever you do in this, it may be of ill consequence to posterity.

I could freely give my vote, that he is a grand impostor and seducer, and that his opinions are heretical and blasphemous. His confession will justify me thus far; but then, to vote it horrid blasphemy, I cannot consent.

This vote of yours will be very conclusive; so that I desire to declare my conscience in it, that I am not satisfied from what I heard at the bar, that Nayler is guilty of blasphemy. Were it not that such a punishment is to ensue, I could be freer in it; but I know this is but in order to a greater vote, &c.

Mr. Reynell. I would have you wholly lay aside the Report, and go upon what Nayler confessed at the bar; which, in my opinion, was full enough and pregnant, that he did own and assume the honour and attributes due to Christ only, with a distinction. My humble motion is, that you would vote it horrid blasphemy; for I cannot conceive how it should be less, both from his own confession here and at the Committee, besides the other proofs.

Mr. Waller. I would not have the offence made greater than it is, lest the punishment prove also greater. These two rubs must be removed before I can give my consent:—

1. What blasphemy is.

2. What shall be the punishment.

I am for the moderater title, that he is a great impostor, and a seducer. This will fully bear your witness against it. I incline to the moderate way, lest you open such a vein of blood as you will scarcely close.

Colonel Holland. I hope he may speak now that has spoken nothing in this business. Consider the state of this nation, what the price of our blood is. Liberty of conscience, the *Instrument* gives it us. We remember how many Christians were formerly martyred under this notion of blasphemy; and who can define what it is. I am wholly against the question. I may transgress your orders, it being the first day I sate here.

A greater punishment do they deserve that are thus deluded, than he that suffers such things.

Resolved, That the word 'horrid' be added to the question.

Resolved, That the main question shall be put.

Resolved, That James Nayler, upon the whole matter, in fact, is guilty of horrid blasphemy.

Major-General Goffe and *Captain Hatsel.* That you would also add this to the question, that James Nayler is a grand impostor, and a great seducer of the people.

The Master of the Rolls. Add the word, likewise.

Resolved, That the said James Nayler is also a grand impostor, and a great seducer of the people.

Mr. Bampfield and *Major-General Skippon.* Adjourn this debate till to-morrow, and nothing to intervene.

Colonel White. A little time will end this business. You may now soon come to a determination as to the manner of your proceeding, whether by attainder or not.

Dr. Clarges. In hopes of the party's repentance, upon the converse of some godly divines, adjourn this debate till Monday next.

Mr. Robinson. Put off this debate till Monday, and go on with your more serious affairs.

Mr. Berkeley. Let another day be appointed for petitions.

Captain Hatsel. I am for adjourning till to-morrow; but I would have two or four gentlemen appointed, to bring in a bill of attainder against him.

Sir William Strickland. I am very inclinable to mercy; and to that purpose do second that motion, that some godly divines might talk with Nayler, and in the interim suspend the debate. I desire his conversion.

Sir John Reynolds. I would have some ministers to speak with him, as Dr. Owen, Mr. Caryl, and Mr. Nye.* Possi-

* Dr. Owen was Dean of Christ Church, and Vice-Chancellor of Cambridge University, of which he had been the representative in the Protector's former Parliament. Caryl is now chiefly known by a voluminous commentary on Job. Phillip Nye had been one of the Commissioners at the Isle of Wight in 1647.

bly some good may be wrought upon him, and in the mean time, adjourn the debate.

Major-General Goffe. I shall second that motion of mercy, for that worthy person. It was Christian; I desire it may not die. Let us use all possible means to convert him.

Sir Christopher Pack. I do freely agree to that Christian motion, to send to him some divines, and go on with your debate at the same time. I would have Dr. Reynolds.*

Major-General Whalley. First consider his punishment, and then send divines to him. When he is made apprehensive of his danger, you may have the better hope of his reclaimer.

Sir Gilbert Pickering. I am against sending any divines to him, till you have proceeded further in the business, and then let him have all the benefit of conversion that may be. He will say, you only court him to forsake his opinions, with the arguments of death. First, let him apprehend the danger he is in.

Resolved, That this debate be adjourned till to-morrow morning.

It was offered to have Thursdays for hearing petitions, but no resolutions therein. Some desired that petitions might be heard in fifth and sixth and seventh places.

Judge-Advocate Whalley brought in a book, which contained witchcraft and blasphemy and free-will, † &c.; desired the House would take it into consideration, and do something in it.

Mr. Speaker. In such cases, the gentlemen ought to extract such heads out of the book as are blasphemous or heretical, &c. or the like, and upon those heads charge the author; for it is not likely that every member has read that book, so as to pass his judgment upon it.

This gentleman may bring it in some other day.

The House sat till past six, half an hour.

Colonel Holland came this day into the House.

* After the Restoration, he became Bishop of Norwich.

† Designing, no doubt, the doctrine of the *Arminians* or *Remonstrants*.

Tuesday, December 9, 1656.

A report was made of amendments to the Bill for taking away purveyance,* and composition for purveyance, which were agreed, and the Bill ordered to be ingrossed.†

Per Major-General Whalley. An Act concerning Commons, appointed to be read to-morrow the first time.

Per Major Beake and *Lord Claypoole.* An Act for the provision and better maintenance of the several ministers of Northampton. Read the first time.

Colonel Rouse proposed, that this Bill might not be read the second time; but first to dispatch all reports; only admit the Bill for the Sabbath.

Resolved, That this Bill be read the second time on Saturday next, per motion of Lord Claypoole and Sir Christopher Pack.

Per Colonel Shapcot and *Mr. Speaker.* A Private Bill concerning a member, viz. To enable Richard Carter to sell lands, for payment of his debts and his father's. Read the second time.

Colonel Rouse. This is a just Bill; yet I would have no more of the lands sold than is needful. Would have it committed.

Alderman Foot proposed, that it might be committed.

Mr. Robinson. I would have this Bill committed with special directions. You have had more bills of this nature before you this Parliament, than ever came here in that time. I would have the tenants in remainder, and the trustees, to have notice of this Bill, that all parties may be heard before the Committee: yet, lest you cut out other men's estates, haply most of the debts may be paid, or there may be a broken title, &c.

Colonel Shapcot. It is only the crossness of the trustees makes the gentlemen this trouble. It is a just bill, &c.

* "The providing corn, fuel, victuals, &c. for the King's house." Of this vexatious prerogative Queen Elizabeth had been peculiarly tenacious.—See *Parl Hist.* iv. 327.

† See *Journals*, vii. pp. 387, 402, 407, 447.

Resolved, That this Bill be committed, and the Committee to meet to-morrow afternoon in the Dutchy Chamber.

Per Colonel Cox. An additional Act for encouragement of trade and navigation in this Commonwealth. Read the first time.

Major-General Disbrowe, Captain Baynes, and *Sir Christopher Pack.* This is a Bill of consequence, and ought to be hastened. Desired that it might be read to-morrow.

Mr. Downing. I except against the clause for prohibiting the importation of nets, and other matters of consequence.

Mr. Robinson. That of nets is the best clause in the Bill, and I am glad the mariners are so sensible of the laying of our English ships by the walls.

Resolved, That this Bill be read the second time to-morrow morning.

Major-General Howard, stood up and offered a petition; I conceive it was the tenants of Westminster's petition. But Mr. Speaker took him down, saying, "Mr. Stanley speaks to the order of the day; I must hear him first." Mr. Speaker read the petition to himself.

Per Mr. Stanley and Dr. Clarges. An Act for the settling of Winston's Hospital, in Leicester, read the second time, it being the order of the day.

Major-General Packer. There was a Petition to the same purpose, from the master of Winston's Hospital, appointed to be read with the Bill: which Petition was read.

Alderman Foot proposed, that the Bill and Petition might be committed, and all parties to be there heard.

Sir William Strickland. There is not a greater grievance in England, than the abuse of Hospitals. I desire it may be committed.

Mr. Speaker. I doubt this Bill is too short, for you to give power hereby to let leases for twenty-one years, or three lives; but they are not restrained, for they may take what fines they please, and reserve what rent they think fit. This is but a renewing of the grievance complained of.

Major-General Packer. The master of the Hospital has as good a right to be master as any man has to his lands, and

you only change hands, and put the same power into the hands of others, to take fines and reserved rents, at pleasure.

Mr. Stanley. This master was settled in the Long Parliament, and instead of reforming, he goes his own track, and for 40*l.* land per annum, he has reserved but 3*l.* per annum. The whole is 12 or 1300*l.* per annum; so that, if speedy course be not taken in it, the revenue will be wholly lost.

Colonel White. There are no such abuses in the master as are complained of. He is more out of purse than he has got. He desires but to have the Hospital regulated, with a saving to his Highness's rights, and the master's own right, which is not past 40*l.* per annum. He took for one fine, 60*l.*, another 40*s.*, another 18*l.* Yet, notwithstanding the tendency of this Bill, both to take away his Highness's right and the master's, I am content that it should be committed, and all parties heard.

Sir Richard Lucy made a long narrative of the foundation of this Hospital in Queen Elizabeth's time, and that a Commission from his Highness issued out, to inquire of these abuses in that Hospital.

Mr. Solicitor-General. I doubt this Bill will not do the regulation you intend. This is but the changing of hands; for it seems they have power to let leases, as before. It seems the poor have no more but the old rent in the time of *Henry* VIII. I would not have it go the wrong way. You take away his Highness's right, in disposing of the master's place, and give it to the town of Leicester.

Mr. Bond. It is said that this master had done good service in the Long Parliament. I should know surely as much as another.

Major-General Howard. As it has been well offered to you; as this Bill is penned you do but only change hands: besides, you oust both the master's and his Highness's right. Commit it.

Mr. Cary. You have many Committees. I would have you not to appoint any new ones; but, if I may offer you one Committee, I desire it may be referred to the Committee

for the Universities. But Mr. Speaker said it was against the orders of the House to name a Committee, till it was first agreed to commit it.

Sir William Roberts proposed, that they might only have liberty to let leases for years, and not for lives.

Major Audley. It is truly said, that since popery was abolished, charity has left the land; and what is the reason but the changing of the foundation. Where they are merely superstitions, I would have them reformed, but not taken away. I conceive this is but a changing of hands, as has been often offered to you. I shall conclude with what Mr. Fuller says of Grantham steeple, "Those that except against it, let them mend it."

Mr. Robinson. I am against committing the petition, for it is against the Bill, and would have it reduced to the old course. I would have the master made exemplary, for betraying his trust, in reducing rent of 40*l.* per annum, to 3*l.* He is a non-resident, which is not allowed in our generation, as it was in *Henry* VIII. and Queen *Elizabeth's* time.

Resolved, That this bill be committed to morrow in the Duchy court.

Lord Richard Cromwell. To save your time, I would have you refer it to the Committee for the University of Cambridge, which is *sine die.*

Major-General Whalley. You have another bill, more generally concerning hospitals: I desire it may be referred to the same Committee. But Sir Gilbert Pickering took him down by the orders of the House, and Mr. Speaker ruled it.

Resolved, That Mr. Lee's petition, and all the other petitions, touching this business, may be referred to this Committee.

Colonel Markham. The trustees ought not to have been named in the Bill, but referred to the Committee, to fill up blanks.

Lord Eure brought in a Petition from Savoy Hospital, in Yorkshire; desired it might be read.

Mr. Robinson and *Sir William Strickland.* Yorkshire

does not often trouble you with petitions. It is so just it will soon be granted.

Mr. Nathaniel Bacon. It is time to go to the order of the day, at eleven o'clock, if you intend to do any thing in it. I desire that no other business may oust a matter of such weight.

Major-General Whalley. I moved you for a petition in the general, and am content to set that aside. I hope you will not admit a private petition, and reject a general petition.

Alderman Foot. You should have some respect to poor Yorkshiremen. I desire their petition may be read.

Mr. Margetts. You might have read this petition in half the time you have been debating it.

Major Audley. It is too late to go to the order of the day now. I desire you would read both the private and the public petition.

Resolved, That both these petitions be read to-morrow morning.

The order of the day read, about Nayler.

Major-General Howard. I offer a petition from some ministers of the North in relation to this business of the Quakers. Haply it may be some information to your proceedings in this particular.

Mr. * brought in another long petition from Cheshire, to the same purpose; desired that they might be read.

Mr. Robinson. I would not have you make any use of these petitions, or admit them upon your records as evidence. It is collateral matter, and ought not to be any direction to you, either to aggravate or extenuate the offence. These petitions may be offered more properly after.

Major-General Howard. True, there is nothing in this petition relating particularly to James Nayler. I would not offer any thing that might aggravate the offence. For my part, I said something to express that I was not so severe as haply others are, especially in matter of punishment.

Mr. Nathaniel Bacon and *Colonel Shapcot.* I hope you

* Blank in MS.

will not rest here, but proceed to further judgment; lest it be said abroad, you have declared an offence, and have not a law to bring the offender to justice. I would have it referred to the same Committee to bring in a Bill of Attainder, with a blank for the punishment. I was sorry to hear it said in this House, that there was not such a thing as blasphemy.*

Colonel Sydenham. Nothing said yesterday ought to be repeated to day. I know not what you mean by a Bill of Attainder, if it be not to take away a man's life.

If you bring a precedent to this purpose, you must set it upon the rack. To take away a man's life by a subsequent law, it is of dangerous consequence. I fear there is something in the bottom of such a motion which scarcely agrees with the rule of the Gospel. To take away his life I am not satisfied, but am for some other secure way of punishment.

If Nayler be a blasphemer, all the generation of them† are so, and he and all the rest must undergo the same punishment. The opinions they hold, do border so near a glorious truth, that I cannot pass my judgment that it is blasphemy. I shall choose rather to live in another nation, than where a man shall be condemned for an offence done, by a subsequent law. I am against the Bill of Attainder.

Judge Smith. I have as tender a conscience as any man to tender consciences, and I am also as tender of the honour of God. How tender are we of our own privileges! not an arrest upon a footman but severely punished, as done to us; I doubt we shall be but too tender in this business.

What are we called in other nations, but the great nursery of blasphemies and heresies; and what will they say, now we have passed a vote against a horrid blasphemer, and we are at stand what to do with him. But we are afraid of a precedent. For my part, I am not afraid of this precedent; I am sorry there is occasion for it; but it were without precedent if we let it pass unpunished.

Was not the king‡ justly condemned by the legislative power for tyranny, treason, and oppression. It was a just sentence. The like for the Earl of Strafford and the Arch-

* See *supra*, p. 62. † The Quakers. ‡ *Charles* I

bishop of Canterbury, the Bishop of Rochester's cook,* and Hackett, &c. Six or seven were condemned and hanged at Tyburn, for speaking against the Book of Common Prayer,† a slenderer offence than this.

Our laws make it death for robbing a man, though he take but 12*d.* from him. Burglary by night, though nothing be taken away, is death. Yet we make nothing of robbing God of his glory. My motion is, that a Bill of Attainder may be brought in; and, if you have no other punishment, that you would fill up the blank with the old way of punishment, that he may be stoned to death.

Lord Strickland. I do agree with your vote, that he is guilty of blasphemy; but, I hope, when you come to prepare your Bill, you will not put in the word blasphemy; for it is a reproach of a man as well as against God.

The text of the Israelitish woman was that she blasphemed. The original is, "She cursed God." It is a word of a general acceptation. I would not have it in your Bill generally, but as blasphemy against God, with a blank for the punishment. I would have his offences summed up, as his taking adoration, &c. in the preamble.

A man may be attainted of a riot, a trespass, but the proper attainder is of felony. The king's case was not by attainder, but by a high Court of Justice was he tried.

In the Earl of Strafford's case, counsel was heard on both sides, and he was attainted of treason. The Archbishop of Canterbury's case was upon the same ground. Hackett was proceeded against as a rebel. Some proceedings were by the bishops against heretics, but I never knew any law for it in England. I speak it not to extenuate this wicked wretch's

* See *infra*, p. 111, *note*.

† Probably a reference to *Brownists*, who were put to death by Elizabeth, though not all "hanged at Tyburn." The names of six victims to the intolerance of "the maiden reign" have been preserved.—See Peirce's *Vindication*, (1718.) pp. 144—151. Camden (*Anno* 1593.), having described the Queen as "promising that she would dedicate all her cogitations to God and the Commonwealth," introduces one of those sufferers by showing, "how she performed this towards God by inflicting punishment on Henry Barrow and his sectaries."

offence, nor to lessen the power of Parliament; but I conceive it very proper, for the consideration of a Parliament, to beware of a precedent of this nature to posterity. There may be a Bill for banishment; for, by the law, no Englishman ought to be banished but by Act of Parliament. Nor can you properly pass any sentence upon him but you must do it by Bill. I am not satisfied in your judicial way of proceeding. I would have every Englishman be careful in this case. It has been our happiness to be governed by a known law. The Earl of Strafford's case is particularly excepted, not to be drawn into precedent.

I cannot say but we have laws enough to reach this offender, if the gentlemen of the long robe would direct us. Where most power of the Gospel, most prodigies of heresies and opinions; which will happen always, unless you restrain the reading of the Scriptures.

Hackett was punished for setting himself up as a king: this fellow did more. He made himself higher, a pope, by suffering his feet to be kissed.

Heresies are like leaden pipes under ground. They run on still, though we do not see them, in a commonwealth where they are restrained. Where liberty is, they will discover themselves, and come to punishment. There is no such need of drawing you out to such punishment as death. Restrain him, rather, to some country or place; banish him, &c. This House is a living law, but make as little use of the legislative power as you can. It is a dangerous precedent to posterity. It is against the *Instrument of Government* to proceed to further punishment upon this business. Confine him, banish him, or do what you will.

Major-General Jephson. I wonder such a doctrine should be broached in this House, that it is against the liberty of the people to have recourse to the legislative power. I think rather, the contrary. The case of the Earl of Strafford only limits the judges not to proceed upon that law; but surely the gentlemen are mistaken, who say the Parliament is restrained thereby. I know no such clause in that Bill. Doubtless you may resume that power when you please. I would, to choose,

leave a precedent in this case, to posterity. There is no danger at all in it.

I hope God will stir up your zeal in a matter that so eminently concerns the cause of God. We ought to vindicate his honour. For my part, I am clearly satisfied that, upon the whole matter, this person deserves to die.

Major-General Disbrowe and *Mr. Robinson.* You should adjourn this debate for an hour. Some had dined and were upon an advantage.

Resolved, That this debate be adjourned till three o'clock.

I went with Mr. Disbrowe to dine with cousin Highmore and the company of cloth-workers, in London, and the reading their brief of eleven sheets* kept me till night, so that I was not at the beginning of this debate. But Major Brooke told me some part of it.

It seems there had been strong endeavours to qualify and lessen the crime. Captain Baynes used the argument to spare him thus: "Nayler prophesied of his death; let us make him a liar by saving his life." Major Brooke answered: "By this rule the murderer, and felon, and robber, may say they prophesied their death. Will you, therefore, spare them? You will have a good many prophets upon this account." Sir Gilbert Pickering had been speaking a good while, to lessen the offence, and was at it when I came in. He concluded for some lesser punishment than death, to be inflicted, as whipping.

Sir Charles Wolseley. It is most orderly, first to agree of the punishment, and then to bring in a Bill, if a Bill be proper; which I question.

The legislative power of Parliament is great, but not so as to be taken up upon this occasion. I am afraid of an ill precedent. As I would have us bear our witness against this crime, yet I would have us do justice in a just way. We may not, by the legislative power, do what we please, call that an offence which is not. We have also a Master in heaven, to whom we must give an account.

I cannot apprehend this matter to be of that height as to

* See *infra,* p. 116, *note.*

merit the punishment of death. I am for a lesser punishment, as pillory, imprisonment, whipping, or the like.

Major Beake made a long speech to prove it to be blasphemy. It was dark, and I could not take it; but his conclusion was, that he conceived it was a fit punishment to cut out his tongue, and cut off his right hand, and then turn him beyond seas, and let him go with the mark of a blasphemer.

Lord President made a long speech to extenuate the offence, and concluded for a moderate punishment, as whipping and imprisonment. Mutilation was as bad as death. He made an apology, that he had nothing to say for Nayler; he had no favour for him more than upon account of tenderness. He called him an erring person.

Sir Richard Onslow. I am fully satisfied that the offence is blasphemy, and deserves to be punished as blasphemy; but would have a blank brought in for the punishment, in the Bill of Attainder. Make the punishment what you will, you must have recourse to the legislative power. Your judgment must be *ex post facto*, if you pass any sentence at all in it.

Major-General Kelsey. A Committee should be appointed to consider of a way of punishment, and present it to you.

Lord Fiennes made a long speech, to extenuate the offence. Hath not heard the party, nor any thing of the business, yet submits to your vote. Cannot agree to punish it by death, or mutilation of any members. Would have him put into Bridewell and whipped, and so humbled into a conviction, and that, in the meantime, the person and the charge might be sent to his Highness, for his satisfaction in the matter; and this sentence to pass upon him by Bill of Attainder.

Colonel Mathews. It has been firsted, seconded, and thirded. I desire the first question may be put, about bringing in a Bill of Attainder. I shall reserve my judgment, wherein I shall haply be very moderate respecting the crime.

Lord-Chief-Justice. As this is without precedent, I would have us very tender in what we do in this business. I am altogether unsatisfied in passing sentence of death upon him; but some lesser punishment, as pillory, whipping at the places

where the offence was committed, and to be debarred all society, &c., and this by a judicial way, which I question whether it be solely in the Parliament, or in them and his Highness, as affairs stand now.

Sir Richard Piggot proposed, that his tongue might be bored through.

Sir Thomas Wroth. The question should be for the Bill of Attainder, with a blank for the punishment. I conceive the offence is very high, and ought to have punishment proportioned.

Mr. Bampfield made a very large and handsome speech in answer to what Lord President, Lord Fiennes, and Lord Chief Justice, and the rest of the merciful men had said; such as they were scarce able to reply to. He proved it, that it was the mind of God to punish this offence with death, and he could not pass his judgment otherwise.

The magistrate is *custos tam primæ quam secundæ tabulæ*, else I understand nothing. That of *Rom.* xiii. is clear. That of suffering the tares to grow with the wheat,* was not spoken to the magistrate, but to private persons.

1. Argument. By the law of nature, it is blasphemy to deny a Deity.

2. The judicial law as to the equity, is moral to us.

3. That law of Darius against those that should speak evil of Daniel's God.†

4. The example of our Saviour's suffering is drawn thus. If he had not been really Christ, then had the Jews done justly in crucifying of him. For the Spirit of God holds this forth plainly, that the charge laid against him was, that he, being a man, called himself God.‡ And was this offence of Nayler's less than calling himself God, and assuming the name, title, and incommunicable attributes of our Lord and Saviour Jesus Christ, and the worship due to him. If this be not blasphemy, then there is no blasphemy in the world.

I thought to have reserved my judgment as to the punishment, but seeing all along the debate has run to confound

* *Matt.* xiii. 29. † *Daniel.* vi. 26. ‡ *John* x. 33.

the crime and punishment together, my humble opinion is, that his crime deserves to be punished with death.

Colonel Chadwick. First whip him for the lesser crime, as for being a seducer and an impostor, and haply that may work him into a sense of sorrow. If not, then proceed to higher sentence upon the higher offence.

Sir John Reynolds. I would have your time saved, and not go this long way to work, by a Bill, but proceed to pass some moderate punishment upon him. as whipping and imprisonment; and that by the judicial way: but to punish with death, I am against it.

Mr. Robinson. I would not have you trouble yourselves with a Bill of Attainder, which will take up two or three days of your time; but pass some such moderate punishment as offered to you, by a vote.

Mr. Speaker offered as an addition to the question, that Nayler might ride backwards on horseback through Bristol and the other towns he had passed through, and from Westminster to the old Exchange, &c.

Sir William Strickland. I see many persons that are up to speak in this business. I would have no man hindered from declaring his conscience to the full, so desire that this debate be adjourned till to-morrow.

Mr. Bond. I second that motion, for I had something upon my own spirit which I thought to speak; but I desire rather that you would adjourn. It is late, and others I see desire to be heard; but, Mr. Speaker, I would have you keep us to our orders, that none may speak to-morrow that has already spoken to this question. The Speaker said he would keep us to it.

Resolved, That this debate be adjourned till to-morrow morning. We sat till almost nine, it being the last night of the natural life of this Parliament.*

* Yet as it first met September 17th, it had sat only three, instead of five months.—See *supra*, p. 42, *note*.

Wednesday, December 10, 1656.

The House being moved in the behalf of divers persons, who did, in the year 1642, lend freely upon the first proposition, upon the public faith, that are reduced to great need and extremity, having received no part thereof; and considering how much public faith hath been paid, by doubling upon silks and otherwise, wherein the state hath been defrauded of very great sums of money by counterfeit bills, and thereby the persons to whom public faith was due, and should have been duly satisfied, have been defeated; and to the end such abuses may be discovered and prevented for the future, and the accounts stated in the country, did resolve, *ut infra.*

A Petition of Lord Salisbury, about 5,000*l.* public faith due to him. Read and committed. It was offered, that the same Committee might find out a way to satisfy it.

The House divided upon it, and resolved the Committee should not.

Yea 44. Mr. Bond and Colonel White [Tellers.]

No 77. Mr. Robinson and Mr. Dunch [Tellers.]

The Master of the Rolls. Pray let me now bring in my clients. I have met with a great many old friends. I am mightily called upon by the public faith men. You are executors to the Long Parliament.

Major-General Disbrowe. We may be executors, but, I am sure, we have no assets. I wish this gentleman could find out some.

Mr. Robinson and *Colonel Wilton.* The business of the public faith should be considered by the same Committee. The people are ready to starve. It was given to me in command from the county I serve for. I hope you account not these creditors heretics, that you will not keep faith with them, and that it shall never be said of a Parliament that they borrowed and paid not again. Some lands in Ireland and England are unsold.

Colonel Shapcot. You will add but to the oppression of the people, to call them up here about you, in hopes to be

satisfied forthwith. The last order for satisfying public faith, had the same effect. First find monies to satisfy it, and then receive their complaints.

Major-General Disbrowe. Fraudulent bills have taken the meat out of the mouths of those that should have been satisfied. I would have us all zealous in it; but I doubt we can do nothing till we be stored for our own occasions. It were an easy thing for your members to ascertain the debts of every county, that we might once say, we owe such a county nothing.

Captain Baynes. The only way to prevent frauds for the future, is to ascertain the debt first. If you had done so at first, you had owed none at this day; for frauds and cheats have eaten out a great many just debts. There are lands and forests in England and Ireland unsold, which you may sell at fifty years' purchase, and reserve a fee farm rent, which will be as great a revenue as you now make.

Mr. Butler. The Parliament's debts are your debts, and you ought to satisfy them, as is well propounded to you. Some persons chose rather to want their debts than enter them at Worcester House, and frauds and cheats interposed.

Colonel Clarke. I believe you have paid more public faith bills than ever you did owe. I would have it referred to a Committee to state the account of the debts before ever I shall give my consent to satisfy it.

Much debt is charged upon the public faith, which never was intended. You must take some course to prevent frauds, else the clamour will follow you to all generations: it will never be satisfied. I would not have malignants' and neuters' debts. These two qualifications to be considered; the debts and persons.

Sir Christopher Pack. Let not this go off till you take some course herein. You will never be quiet, but followed perpetually.

Mr. Robinson. Something should be signified in the vote, to let the people know that this must be done in the country; lest you draw greater charge upon poor people, to call them up. You may find out such persons fit to be intrusted,

such as have been faithful from the beginning, that understand who are malignants and who neuters. You have lost above 500,000*l.* by this means. Persons not only sequestrable; but actually sequestered; yet their losses satisfied under the motion of public faith, by means of the sheriffs whose hands they produce, and none knows whether counterfeit or no.

Sir Thomas Wroth made a long story of the bodkins, spoons, and thimbles, that were freely cast into the Treasury.*

Many are undone by it. Some lost their lives. One gentleman lost his wits and memory, and died. I was hard put to it to answer a gentleman what the public faith was, wherein I could give no account.

Major-General Howard and *Colonel Whetham* proposed, that Sir William Dick's debts might be considered by this Committee.

Resolved, That it be referred to the same Committee to consider of a way of stating the public-faith debts in the country, and to consider the persons to whom due, and how a way may be found out for satisfying the same; and report it to this House with all convenient speed.

Resolved, That all that come shall have votes.

Resolved, That the Committee for the Union of Ireland be upon Friday; supporters of the motion Sir William Strickland and Major Ashton.

Resolved, That the Grand Committee for Scotland, be upon Saturday, on the motion of Major-General Howard. He had the other petition in his hand.

Per Sir Charles Wolseley, that the Committee for four Colleges in Cambridge, are *sine die.* I desired a new day.

Per Lord Richard Cromwell, that Mr. Hampden and Mr. Bodurda be added to the public faith Committee.

* "Unusual voluntary contributions," says *Howell,* "were made, both in town and country. The seamstress brought in her silver thimble, the chambermaid her bodkin, the cook his silver spoon, the vintner his bowl, into the common treasury of war. Some females would part with their rings and ear-rings."—*Philanglus,* (1658.) pp. 125, 126.—See Dr. Grey's *Note* on *Hudibras,* part ii. c. ii., where *Women*

"Brought in their children's spoons and whistles,
To purchase swords, carbines, and pistols."

Mr. Speaker minded us of the order of the day, which was read; and also the question for the moderater punishment.

Mr. Speaker was going to put it, but they cried "No! the questions." He should be whipped from place to place, ride backwards on horseback, and be imprisoned till released by Parliament, kept to hard labour, &c.

Colonel Milton. By this question it seems you have forgot what you voted the night before. This is like condemning a man for high treason, and punishing him with the pillory.

When the life of a man and the honour of God comes in competition, I cannot but say we ought to prefer God's glory. Surely we ought.

These vipers are crept into the bowels of your Commonwealth, and the government too. They grow numerous, and swarm all the nation over; every county, every parish. I shall turn Quaker too; but not in that sense.

I remember what an honourable person in my eye, Major-General Skippon, said of the growth of these. He feared more the growth of these, than all the foreign and intestine enemies. Remember Eli's case. What will it be said abroad, if you pass this heinous crime without your due resentment of it? You may guess my conclusion from my premises. It is your duty to vindicate the honour of God and of Christ Jesus. I desire that a Bill of Attainder may be brought in, not with a blank, but with a full punishment, that is, death. That is my humble motion.

Colonel Cooper. I shall not speak to lessen or extenuate James Nayler's crime. I see the House inclined to a division upon the manner of punishment. I should be loth, but we should be unanimous in it. It is no wonder to find this fellow acting these practices; for he is in Satan's hands, being cast out of a church for his opinions and lewd carriage.

I dare not say he has blasphemed. It is grievous to me to see the crime so magnified. There is certainly a blasphemy greater than this, as the denying or cursing of Christ.

His suffering himself to be worshipped; I would have the House consider of that distinction. This is a nice distinction, a vast difference between Christ dwelling in us, and being

worshipped in a creature. I confess I never heard of the like of him. The like distinction of his assuming the attributes. I must agree, if the spirit of Christ had been in him, as he pretended, his carriage had been otherwise. It is certainly darkness and a strong delusion.

I cannot say this is horrid blasphemy, though there may be blasphemy horrid, and more horrid, and most horrid. I offer it to you, whether it were not a greater blasphemy to say he were very Christ.

I have observed much division in the manner of punishment, and some alteration in men's judgments, that were once against a Bill of Attainder, because of the tediousness of it. They talked of three days time of sitting, now they scruple not to take up three weeks time, having no more assurance of sitting than we had before.

I cannot but say it is blasphemy. But admit it were horrid blasphemy, as my judgment is now involved in your vote, yet I cannot be satisfied that the House are any way led to pass such a heinous punishment as death. I understand no such obligation upon us. That is something extreme, and it is hard to lead this House into such a judgment, as to pass sentence of death against such a person as fears God, by what we have heard.

Precedents are urged, but nothing relating to this business. I am satisfied that the House may exercise their legislative power for a matter *ex post facto*; for if you do any thing in this business, it must be by this power, and no other.

I know some part of the land mourns for the innocent blood already shed upon this account. I cannot say this person is innocent; yet if we take his life where God does not require it, that is a shedding of innocent blood. I fear as much a judgment upon us, if we take his blood, as they fear if we go less.

This House may proceed to fine, imprisonment, and corporal punishment, and this in a judicial way, without preparing a Bill. In my opinion there needs no Bill. His fine will signify nothing; but he has a body. I would have you use some endeavour to suppress the growth of them in general.

If you take this man's blood, you do certainly lay a foundation for them. Instead of taking away Quakerism, you establish it.

For my part, I think, next to life, you cannot pass a greater punishment than perpetual imprisonment, where he may not spread his leprosy. If you cut out his tongue, he may write, for he writes all their books. If you cut off his right hand, he may write with his left. The other punishments will certainly answer your ends more than if you take his life, and be a better expedient to suppress that generation of them.

Mr. Bond. My memory will not serve to repeat all the arguments that have been used in this case. The Earl of Strafford's was a complicated offence; so the Archbishop of Canterbury's. He was tried in the same way for innovating a new religion. That Parliament left two precedents. I am not afraid of a precedent in this case; but I would have this Parliament to leave such a precedent in this very case. I shall tell you a relation from very good hands, merchants, &c. The Parliament of Burgos [*Bourdeaux*] have hanged, drawn and quartered a Quaker for these very opinions.* That Parliament will rise up in judgment against you. I would have you consider what vote you have made, and how you can go less than the punishment equivalent.

I would have you go the same way with this man as they did with the Archbishop of Canterbury. Resume the power of Parliament in this case, and trouble not the Lord Protector with it. Cut off this fellow, and you will destroy the sect. The like issue was in that statute† for restraint of Egyptians, [*Gipsies*] and they quickly vanished.

I would have you take the judgment of this business upon yourselves, and never go to try him without doors. I shall freely give my vote that the fellow shall die for this offence, and I know not how you can, with honour and safety to this

* *Whitlock* says, "The Parliament of Bourdeaux lately adjudged an Englishman to death, upon the complaint of the Protestants there, for blasphemy, in saying that he was Christ." See the reference, *infra*, p. 128, *note*.

† In 1551. See *Parl. Hist.* iii. 332.

nation, do any thing less. I would have you lay aside the other question, and put this.

Major-General Packer. It has been alleged that God himself directed the punishment of an offender, in this kind, with death. Are we as equal judges herein as God was?

You have voted this person guilty of horrid blasphemy; but you have not brought it home to that case wherein God directed the punishment: for he cursed God,* which this man hath not done. Few of us but are blasphemers in one sense. Job and his three friends were blasphemers.† This person tells you there is but one God, Father, Son, and Spirit. A strange notion that the Holy Spirit dwells personally and essentially in them,‡ yet I know many godly men of this opinion.

He does not vilify Christ, deny his doctrine, miracles, sufferings, and looking for his coming; though he draws dangerous principles from this. This is no parallel. That man's blasphemy was cursing God. This is of a lesser nature, though an offence very high.

Magistrates in the Jewish commonwealth, and in Christian commonwealths, do very much differ in their jurisdiction, in matters of religion. To them it was more peculiar; for by that text we are safe. God has not declared that we should put this man to death. I would have him live to repent; nay, if it be but to make a show of repentance.

We may commit a crime, and trespass upon the common law, by introducing the Jewish law, which does not agree with us, with our *tempora.* The martial law is a good law in its own body; but apply it to other purposes, it is a bad and tyrannical law. Going a mile from one's colours is death by that law. "God forbid," will a conscientious man say, "to hang a man for going a mile from his colours."

A good law in one nation is a bad one in another. Our law makes burglary and theft death; which is a good law for this nation:‖ yet God's judgment was otherwise. The like for breach of the Sabbath. It was death by that law to

* See *supra*, p. 55. † *Job.* xlii. 7. ‡ The Quakers.

‖ The *goodness* of this law has been justly disputed.

gather sticks; and by your law, a man may work all day, and pay but his ten shillings or five shillings, so that it is no example for us to keep to those Jewish laws, seeing we differ from them in other cases.

But it is said, was not Darius a heathen king, and he made a law against blaspheming our God? How can we do too much for God? Had he caused that God to be preached through all his kingdom he had done God better service; but he lived and died a heathen.

That text in *Zech.* (xiii. 3.) "He that speaks lies in the name of God, his parents shall thrust him through." This cannot come near our case. For if so, we must destroy all sects, Socinians, Arminians, Quakers, and what not; nay, every man that speaks a lie. Few will escape this law.

It is the strain of the Gospel all along, to use meekness and moderation; (instanced in tares and wheat, and "*Ye know not what spirit ye are of*," &c.; and the like old texts.) Did Paul make any complaint to the magistrate against Elymas, the sorcerer, who was a blasphemer indeed?

But it is said, what will people say? It matters not what they say, so we do our duty: That is, to give every man his native liberty, which is given in Holland,* Poland, and other countries, a free exercise of their consciences. What have we to do with what a company of Papists in the Parliament of Burgos [*Bourdeaux*] did? It may as well be said, the Spanish Inquisition may rise up in judgment against us. Tares may turn to wheat, he may be converted, saving with fear, plucking him out of the fire; let us not cast him into hell. You had as good cut off his head as his hand or his tongue. That

* "The Hollanders," says Sir W. Petty, a near and accurate observer, "knowing themselves not to be an infallible church, and that others had the same Scriptures for guides as themselves, and withal the same intérest to save their souls, did not think fit to make this mattér their business, not more than to take bonds of the seamen they employ, not to cast away their own ships and lives."—*Political Arithmetic,* (1751.) p. 28, 29. *Osborn* remarks, that "the Dutch allowed a general mart for all religions, the papacy excepted, without any nicer limitation than obedience to the magistrate in things purely civil." *Works* (1673) p. 452. "An *Amsterdam* of religions" had become a proverbial expression in the 17th century.

tongue that has blasphemed, may glorify God, as it was the case of Paul. He may write to glorify God.

I could name a man that has been a far more horrid blasphemer than this man, yet he is reclaimed, and become a very useful instrument in the Church.

You may as well condemn a Papist for worshipping Christ in the bread and wine, as in this case of Nayler's.

I desire you would put the question for the moderater punishment, and that without a Bill, which is a tedious way, and you may rise without doing any thing at all.

Major-General Skippon. I did not speak to this business. I am not fond of speaking. I shall not trouble you with answering what that gentleman said, though, for my part, I am altogether unsatisfied with what arguments he used to extenuate the offence. I have been much divided in myself between duty and pity. It laboured much to cast something upon your late vote. For my part, I hear nothing said against it, that can convince my judgment but that the person is clearly guilty of blasphemy, horrid blasphemy. All sober Christians will so conclude it.

It seems there is a paper offered at the door, that we would assign what is blasphemy, that others may beware of it. I think it is no hard thing to assign, so that this House need not be at a stand in this case. I am, from these arguments, already much confirmed in my judgment, against that conflict I had between pity and duty.

If any should assume the title or honour of the supreme magistrate, should he not be hanged, drawn, and quartered. This is the case. God has brought this business before you, and if you let it slip, take heed of a judgment. I would have a Bill of Attainder, with a blank, brought in. If God give you not time to do what you would do, it is sufficient that you endeavour what you should do.

Major-General Whalley. Here have been long debates in this business, occasioned by the rambling into the matter of fact, which I hope we are over. I shall speak to the punishment, and I would have this agreed on in peace and charity; that those that are for a low punishment might not be cen-

sured for coldness, nor those for a higher punishment censured for a preposterous zeal. I premise this.

I beseech you, consider what the offence is; it is blasphemy, horrid blasphemy. We are now to consider a proportionable punishment, which, in short, in my opinion, cannot be less than death. It is told you by the long robe, we have no law in being against such offenders. I am sorry for it. But where any law is against blasphemy, what is the punishment, is it less than death?

The Turks (though I propound them not to be imitated by us) put men to death for speaking against Mahomet, who is but a prophet.

It was Nebuchadnezzar's law, and a good law, against those that should speak evil against the God of Shadrach,* &c. The example of God himself, against the blasphemer, and then the precept upon it.

Examples, though they are not obliging as precepts, yet certainly they are imitable where they are good. The paraphrase of the Assembly of Divines upon the text, interprets it both blasphemy and cursing. God provides a law both against cursing and blasphemy to meet with our object. "The curser shall bear his sin, and the blasphemer shall surely die;" so that both cursing and blasphemy are there made capital.

But, if guilty of blasphemy, some object, why to be put to death? If it be a law of God, a moral law of God, I would fain know how it is repealed. Some, from the comprehensiveness of the word blasphemy; others, that it is *ex post facto;* others, a ceremonial; others, a judicial law, others, that we are now under Gospel administrations. They have been all fully spoken to, so that I shall not trouble you to answer it. If men will commit unheard-of sins, is it not just that they suffer by an unheard-of law and punishment? Else it may be said, we want a law.

If it be ceremonial, I desire to know of what it is a type, or where abolished.

* *Daniel* iii. 29. The translation of 1591, says, "speak any blasphemie," and, in a note, describes "this heathen king" as "mooved by God's Spirit."

If a judicial law, ought not we to be as careful of suffering blasphemy as the Jews were.

But the great noising argument is, That we are under Gospel dispensation. Pardon my comparison. This is but like *ignis fatuus*. Does this Gospel-liberty give us a freedom of sinning. Nay, is it not said, (*Hebrews* ii.) "How much more ought we to walk more closely and uprightly before God." If not to commit sin, then certainly not to connive at, not to tolerate sin.

James and John's calling down fire from heaven was not for blasphemy. It was for not receiving Christ. Should we put every man to death that will not receive Christ.

That of pardoning the woman taken in adultery; might not he that was Lord of all pardon her, as well as he gave directions to spoil the Egyptians; must we undertake to pardon sins, and imitate God in this.

Gathering sticks upon the Sabbath day: it was not death for breach of the Sabbath, but for working on the Sabbath. I know no reason, but we may make the same law against working on the Sabbath.

But it is against the tenour of the Gospel, they say. It is true we ought to love one another, but not so as to exclude our love to God. Have we not as well the example of Ananias and Saphira's being put to death.

God has made a law to punish blasphemy, and what are we poor worms going about to repeal that law. Where do we find it repealed.

But I had forgot to answer the objections as to the comprehensiveness of the word. True it is *male dicere*. To speak evil of any man is blasphemy; but we must go to the common acceptation of the word. We call nothing blasphemy, but what is a speaking against God, and assuming his worship, which, take this person's principles and practices together, he is guilty of the horridest blasphemy that ever was. It was told you of a great blasphemer that was brought home. It was Mr. Sedgwick.* Before his Highness, and Lord Ireton,

* See *supra*, pp. 76, 101.

and others, and myself, he said he was God; and divers horrid things, which we went out, and could not bear. I met him afterwards, and did not salute him, for I thought I ought not to do it. But a while after he thanked me for it, and did acknowledge his error, and that he was but a man, &c. He was not so great a blasphemer as this person. That was but the effects of his frenzy; but this man doth it upon sober and deliberate grounds; and, take practice and principles completed, it is higher by much than any I ever yet heard. Let the sentence of death pass upon him, and then use all means possible to reclaim. Give him six weeks or a longer reprieve, and execute no sentence upon him till his obstinacy do fully appear.

Colonel Shapcot and *Major-General Disbrowe.* Lest you kill yourselves, by voting by what death he shall die, I would have you adjourn till to-morrow morning.

Mr. Church. I would not have us adjourn till to-morrow. Take it up this afternoon, not to delay a business which you have sat nine times about. It is time now to resolve.

Major-General Skippon. You are very near a question. I am not willing to rise till we do something in it. The question, whether death or not, will determine it, and declare your sense.

Mr. Nathaniel Bacon. It is more than you can promise yourselves, to-morrow. This is the last day of sitting for ought I know.* I would have you bear as much testimony against it as you can, in the time you have allotted you.

Captain Hatsel. I would have you adjourn till to-morrow; for I would say something to the business, before your question, and I believe so would others. But make it so that nothing should intervene. You spend much time in the morning.

Mr. Speaker. Truly, I am not able to sit out these long debates, forenoon and afternoon; but, if it be your pleasure, I shall be willing to spend my life in your service.

Colonel Hewitson. Though the business before you be a

* See *supra*, p. 92, *note*

work of darkness, yet I would not have your debate or determination to be so; but do it in the day, in the light, that all the world may see you bear your testimony against it.

Resolved, That this debate be adjourned till to-morrow morning at eight, and no business to intervene.

This afternoon, in the painted chamber, sat the Committee for the Appeal of Rodney against Cole.*

There Lord Lisle was hardly put to it, to justify himself in the charge laid against him and old Keeble in the petition.

The case, in short, was thus, Cole had a statute against Rodney for 500*l.* A great part, if not all, of the debt was paid; and, either purposely, or casually, the statute was cancelled, viz. the seal was taken or lost off, viz. the seal of the Counsellor. The Lord Chief Justice's seal, and the other seal, were on.

Cole repairs with this statute, to the clerk of the statutes, to get him to certify it; but he, finding the seal off, refused it; and about three or four months after, Cole brought the same statute to the clerk with a little wax upon it; but the clerk would not yet certify. Whereupon, Cole petitions the Lords Commissioners, viz. Lords Whitlock, Lisle, and Keeble, who decree the statute to be certified, upon Cole's affidavit; notwithstanding the information of Turner, the clerk of the statute, touching the abuse to the seal as above said.

Lord Whitlock dissented, but the other two Commissioners passed the order. Whereupon, by the statute, all Rodney's goods and lands, to above eighty pounds per annum, were extented, and in the possession of Cole for these seven or eight years. Rodney was hung up, he could not be relieved against that decree in any place but a Parliament.

The question was, whether this statute was well certified or no, and whether the order was a good order. Lord-Chief-Justice, the Master of the Rolls, and Lord Fiennes, laboured to excuse the Lords Commissioners, and lay it upon Cole's misinformation of the Court: but Colonels Sydenham and

* See *supra*, p. 19, *note**, *infra*, p. 135.

White, and Clarke, were of another opinion, and would have it personal miscarriage in the Commissioners.

Resolved, *per* all the long robe, and *per* Lord-Chief-Justice, That if there was but any of the wax of the seal remaining, it was a good statute and well certified. But if all the wax was gone off the label, whether casually or otherwise, the statute was a void statute, and ought not to have been certified; and Turner's testimony was clear, that, when he first saw the statute, there was no wax at all upon it.

Resolved, If a deed be once void, it can never be made good without consent of the party; for, if I lose my bonds or statutes, or the seals come any way to be perished, the chancery can never set those a-foot again, as to making them good deeds; but the chancery may relieve the counsee, or obligee, in such cases, and decree the payment of the monies due in arrear, whether it be in whole or part. They cannot compel the party to renew it.

And all obligations and statutes, though of an after date, shall be served before any of these that happen this mischance, or come casually to be cancelled.

Yet Lord Fiennes and Lord Lisle seemed to differ, and said such statute, though casually defaced or perished, should be served first, if first dated, &c.; no difference between a statute defaced and cancelled, (i. e.) without any part of the seal.

Mr. Cole's counsel, viz. Mr. Churchil, cited four or five precedents, where former Lords Commissioners had ordered defaced statutes to be certified. And Lord Fiennes said, that lately, one brought a statute that was desired to be certified. The seal was fresh, but the parchment turned to a jelly; and that what the Lords Commissioners do in such cases, they do it only ministerially, and not judicially. But it was not clear to the Committee that the Commissioners were clear, or that the precedents agreed. One of the precedents was in Christopher Clapham's case.

The case was learnedly opened, and better by the Committee than by the counsel. Mr. Wentfoorth was for Rodney. The Committee adjourned the debate till Saturday.

In the Army Chamber sat the Committee for York Courts, and the Court of Probate of Wills, &c.*

Thursday, December 11, 1656.

A Private Bill was read this morning, but I, not being in the House, know not what it was.

Whitehall, December 10, as see *Diurnal.*†

Colonel William Lockhart, his Highness's Resident in the Court of France,‡ had the honour of knighthood conferred on him by his Highness.

The same honour was conferred upon James Calthorp, High Sheriff of Suffolk.

Mr. Disbrowe and Mr. West told me we had lost one member. Mr. Wakering, of Essex,|| died of a consumption, the last week. He was well in the House but a little before.

Upon James Nayler's business.

The Speaker read the Question for the moderate punishment, and it was cried for, till stood up

Mr. Drake. If you had not passed so great a vote, I should not have said any thing in it. I should willingly have saved his life, if the height of the offence had not called for a greater punishment.

If we pass this, it will have an influence upon all inferior courts. Let us consider the danger of the precedent, as well on the one side as the other. It is said that some would wash

* See *supra*, pp. 8, 17, *notes*.

† See *supra*, p. 38, *note*.

‡ To this office he was appointed December 30, 1655. He was M. P. for Lanerk, and "one of his Highness's Council for Scotland." Sir W. Lockhart had married, in 1654, one of the Protector's nieces; and having timely made his peace with Charles II. "he was appointed in 1672, again ambassador to France," where he died, in 1676, aged fifty-five, "when a patent was making out to create him a peer."—See Noble's "Memoirs of the Protectoral House of Cromwell," ii. 235—261.

|| Dionysius Wakering was one of the thirteen members for that county.—*Parl. Hist.* xxi. 7.

their hands of Nayler's blood. I shall desire to wash my hands of the guilt of giving less than death. Let us consider the honour of God, and the obligation upon us to vindicate it. See what the nation expects from us in this thing. I cannot go less than to desire that the vote may pass for his death. He has prophecied of his death, and let him be convinced.

Colonel Hewitson. If you have a law, I desire you will put it in execution. If you have no law, the Scripture tells you, then there is no transgression. I cannot take that text of the Ishmaelite's child, as any way coming to our case. If his parents should thrust him through, this, by our laws, would be murder. If you take this man's life, by the same rule you might have taken away the life of a Paul, for he confessed himself to be a blasphemer.* We may do the like with all the Jews, Turks, and Infidels, for they deny Christ, which were an absurdity to hold forth. I cannot give my consent to the greater punishment; but if you put the Question for the lesser, you shall have my yea.

Major-General Goffe. This is a very great and weighty business, and I am much troubled to speak any thing in this business. I am sorry to see this division amongst us, but I hope it will end in amity, love, and charity. For my part, I cannot be satisfied in myself to give my consent to less than the death of this man.

Is it not written upon every man's heart that a blasphemer should die. No nation in the world, that have any laws, but they have a law to put a blasphemer to death. But it is said, we have no law to punish blasphemy, because the Bishops are taken away. It was just to deliver us from them and their tyrannical proceedings, but I hope the law remains still. That ecclesiastical power is devolved upon you, and you have justly assumed it, and passed your vote upon it.

I have already told you my thoughts, that I cannot but, from the whole matter, judge this person deserving of death, and that from the Report itself.

He hath assumed the names, titles, attributes, and worship

* 1 *Tim.* i. 13.

due to Christ, and these are my grounds. It is the law of this nation, of all nations, and written upon every man's heart, that a blasphemer should die. But it is said, he is such a person, and such a person. What has he been, a man professing religion, and a member of a Church. Was he not cast out by a Church of Christ for this very offence? Those who are the proper judges of blasphemy; they have delivered him to Satan, to the end he might be humbled; but what has he done instead of humbling himself before God, or to the Church? He resists that authority. I remember not the text in the *Hebrews*, "he that hath tasted of life," &c. He puts our Saviour Christ to open shame, and sets himself above that Church, nay, above all mankind, sets himself up as a Saviour, &c.

Let us consider, (1. *John's Ep.* ii. 19;) "They went out from us, but they were not of us." He is gone out, so we need not stand so much upon tenderness. He has left to be a sheep, and has discovered himself to be a wolf, and so is all the generation of them. They go about and revile the ordinances and ministers of Christ, and would tear the flesh off the bones of all that profess Christ. These are the dry dead sticks which men gather and cast into the fire: the husbandman will not chide you for taking away dead dry sticks, for they cumber the grass; and these are such.

They are like Jannes and Jambres, men of no judgment concerning the faith, only resist the truth. Their folly is manifest to all men.

They are natural brute beasts, and under all these considerations they justly fall under the hand of the civil magistrate.

I find this business to be a matter of great concernment to the peace of the nation, and this is sent to us to try what we will do in it. Christ is the King of this nation, and of all nations, and we ought to vindicate the honour of our King.

Wherever such things rise, they are to me sad presages of the ruin and destruction of a nation.

Revelations ii. 20. deserves your consideration. It is laid severely to the Church of Thyatira's charge, about the woman that blasphemed. He that reads that description of Christ will

find it to be otherwise than that which Publius Lentulus sent to the senate of Rome.

The text says, they shall surely be put to death. That magistrate is not worthy to bear the sword that will not bear his highest testimony against those that dishonour Christ in this blasphemous manner.

We have been long looking for peace. This Parliament and all Parliaments, the people's great query has been, shall we have peace? What will Christ answer us? No peace to the wicked. This hinders our peace and settlement, that we are not zealous to vindicate him and his honour, when it is thus affronted. I take this person at the bar to be far from being the Prince of Peace, but he rather proceeds from the power of another prince.

I shall not entertain an irreverent thought of *The Instrument of Government.* I shall spend my blood for it. Yet if it hold out any thing to protect such persons I would have it burnt in the fire. This were a paling sheep and the wolves together. Do not these go in the way of Cain and Balaam to corrupt and poison, by the Jesuitical* principles amongst them. Instead of protecting God's people and tender consciences, you take away the fence of God's people. I should desire that he might be a brand snatched out of the fire, if it were possible; but as the matter stands before you, I cannot give my vote for less than death, and I would have you keep us to that question.

Mr. Secretary. [Thurloe]. Seeing others have taken the liberty to repeat the matter of fact, I shall take a little privilege to speak too. I look upon this person, and all the generation of them, as such as have gone in the way of Cain. He is vile in his principles and in his practices too.

You may certainly, in heinous and enormous crimes, which are clear to the House, make a law *ex post facto,* either to

* It was no uncommon opinion at this time, that Papists, especially *Jesuits* and *Franciscans* "assembled themselves among the Quakers, and preached in their meeting-houses." See Prynne's *Quakers Unmasked* in *Foxes and Firebrands* (1682), part ii. p. 141. part iii. (1689), p. 195; "Sufferings of the People called Quakers," (1733) i. 14. *note* †.

heighten the punishment, as in the case of the Bishop of Rochester's cook (21 Henry VIII.*) It was murder before, and by that Act made treason. This was not only *malum prohibitum*, but *malum in se*, and this is the case before you.

You must now proceed upon *lex Terræ*, the legislative power. I shall not take upon me to determine the power of the civil magistrate in matter of religion, nor as to his being *custos utriusquæ tabulæ;* but I think this is "an iniquity to be punished by the judges." Though I am not of my neighbour's mind (Major-General Goffe) that the magistrates' slackness in matters of religion is the reason of all calamities falling upon a nation.

I do think it is not the consequence of your former vote, that nothing less than death should be the punishment of the offender. It is not set forth how blasphemy. If that was meant, you might have made it one vote, both the offence and the punishment. Otherwise, many are surprised in it, and upon this account you may alter your vote.

I desire, however, rather to run into the absurdity of punishing him as a rogue. My ground is upon the Report, wherein the gentlemen have taken great pains, and the Report is foul enough; and what he said at the bar I could not comprehend. They were all cantings, such as could not cant

* See *supra*, p.58, 87. This story was then fresh in recollection by the publication in 1655, of Dr. Bailey's "Life and Death of the renowned John Fisher, Bishop of Rochester." In Ed. 2 (1739), p. 109, the circumstances are thus related:—"One R. Rose came into the Bishop's kitchen (being acquainted with the cook), at his house in Lambeth-marsh, and having provided a quantity of deadly poison, while the cook went into the buttery to fetch him some drink, he took that opportunity to throw that poison into a mess of gruel which was prepared for the Bishop's dinner; and after he had staid there a-while, went his way; but so it happened that when the Bishop was called into his dinner, he had no appetite to any meat, but wished his servants to fall to, and be of good cheer, and that he would not eat till towards night. The servants being set to dinner, they that did eat of that poisoned dish were miserably infected, whereof one gentleman and an old widow died suddenly, and the rest never recovered their healths till their dying day. The person that did this wicked deed was afterwards, for the same offence, boiled alive in Smithfield, in the 22d year of King Henry's reign."

with my thoughts. I am of opinion that he is a gross idolater, and an impostor and deceiver, and you ought to bear your testimony against it. But I cannot agree that his punishment should be death. Let it be of a lower sort, and go as high in the punishment as you please.

I should be sorry to see those old laws against heretics put in execution now. I know no law in force at this day against blasphemy; unless it be that of the Old Parliament.

Objection. 1. It is against the law of God, *Levit.* xxiv. 16. and this law is moral and perpetual, and ought to be obeyed, and this man ought to suffer by it.

Answer. We have no such blasphemy before us (admit it to be a blasphemy) as was to be punished by that law. Nor should we put men to death, by consequences and inferences. It was a penal law, a cursing, a speaking evil of God.

That person that was executed in the Queen's time was for treason.* He said he was Christ, and come with his fan in his hand, and that he was to govern the nation. He desired a miracle upon the gallows to witness his innocency and truth in this appearance, but none came.

The Jews put Christ to death for that which was not blasphemy by any law they had, but by their false glosses and interpretations in which we are too apt to proceed. I would fain hear any man give me another precedent in Scripture, declaring what is blasphemy.

2. This law is moral—"As well the stranger, &c. shall be put to death;" so that this is not positive only to the Jews, but moral and perpetual to all nations.

That is to be understood of the proselytes of the outer gate and the inner gate. It is certain, to blaspheme or take the name of God in vain is against the law of God; but we find none put to death upon that law. Moses knew the law of nature better than any that sit here; but what did he do with the blasphemer? He "put him in ward," † but never went to judgment till he had the mind and pleasure of God in it.

* See *supra*, p. 58.

† *Levit.* xxiv. 12.

So that this is not so clear an offence against the law of nature as some would have it.

Objection. The judicial law is in force.

Answer. If that be of force, all the circumstances of that law must be observed. You must lay hands upon him, and cast him out, and stone him, and that city must be pulled down, never to be built again.

Objection. That of the false prophets belonging to Gospel times, and ought to follow that prophecy.

Answer. If meant of all the Gentiles, then, certainly, a great many must be put to death.

English divines' exposition saith upon that text. That this prophecy related only to the zeal of entertaining the Gospel truths. But it is clear it belonged only to the Jews, and is fulfilled already; or a prophecy of the restoration of the Jews. There shall be such a zeal amongst them, that there shall be no idols, no heresy, nor error amongst them. There is another way under the Gospel, to bear witness against such, than by punishment by death. I think there is no consequence at all, from any of the objections, that the legal punishment should now be made Christian; that being plainly a prophecy of the Jewish restoration.

I know not how that example of Ananias and Saphira came in as argument in this business. That was an extraordinary testimony that Christ himself was pleased to bear against them.

The administration of the Gospel is quite otherwise. Shall a minister of the Gospel put a man to death for adultery, because Phineas did it under the law. My opinion is clear that the question should be put for the lesser punishment.

Major-General Boteler. I hope there is no man here but has sought God what to say, before he spoke in this business.

If it cannot be made out clearly by Scripture, that by the law of God this man is guilty of blasphemy, to be punished with death, I shall be of their opinion. I think that law made against blasphemy in *Leviticus*, is as binding to us at this day, as surely as that against murder, which follows in the next verse. Either it must be ceremonial or political. I

hear none say it is ceremonial. We are not obliged, strictly, to observe all the ceremonies used in the punishment. The text says this, "He shall surely die."

We go not about in this thing, to confound the legal and Gospel administrations. We ought to be meek and lowly, it is true. But what says the same text, "Bring my enemies and slay them before me." Our zeal for God's glory is as well commanded under the Gospel as is meekness and lowliness. Can any body tell what Paul's blasphemy was. It may be, it was but a blasphemous thought. If he had not confessed it, who could have witnessed against him. Surely they would not witness against him, that had run to the same excess. He did not confess it till after his conversion.

Job was under a temptation, and he might justly say, *Ego non sum ego.* This case differs.

But it is said, it will be an ill precedent. The next Parliament may come, by this rule, and put to death all that profess the true faith. There may be such a Parliament; and there have been such as were accounted the truest assertors of religion, that have died for heretics. Must we be afraid of doing our duty for that reason. If I were sure to lose my life in the next Parliament, for the principles I hold now, I should not stick to give my vote, that this man deserves death.

It is said, he denies not Christ, but confesseth him. This makes his offence the greater, to know Christ, and, in plain practices, to affront him.

Is this an offence like that of gathering sticks upon the Sabbath-day?

This man has gone all the steps that can be, to this height he is come to now, as his excommunication. Because we are under an administration of the Gospel, "shall we sin, because grace abounds," or countenance, or not bear our full testimony against it?

Shall we suffer Christ thus to be reproached. What will be said to us another day? "Did you not hear my name blasphemed and dishonoured, and did you not extenuate and labour to lessen it."

As we ought to be tender, on the one hand, of taking blood, so we ought to be as careful in sparing it. The greatest care in the world we ought to have of God's glory. He hath said he will not give it to another.

I humbly beseech you, that we own God in this thing, and not be afraid of the person of any man, but declare our judgments freely in the business, with all Christian charity to one another, not censuring one for legal and strict, and another for loose and remiss. My judgment is very clear in this thing, that this person, upon the whole matter of fact, is worthy of death, and I desire a Bill of Attainder may be brought in to that purpose; and that is my humble motion.

Mr. Bodurda and *Lord Strickland.* Many would speak to it that have not spoken yet. Again, you will spoil Committees if you adjourn till the afternoon.

Sir John Reynolds and *Colonel Mathews.* We are all tender of your health, yet we must be all so tender in this matter of such consequence

Colonel Clarke. For your health sake, let us adjourn till to-morrow.

Sir Charles Wolseley. I doubt we shall not dispatch it in an afternoon. I desire we may consider your health, and our own, and take to-morrow for it.

The question arose about adjourning till two o'clock, or till to-morrow.

The House divided upon adjourning for two hours.

No. We that went out were 83. Sir Richard Piggot and Mr. Barrington [Tellers.]

Yea. They that stayed in were 86. Sir John Hobart and Major-General Howard [Tellers.]

Resolved, That this debate be adjourned till to-morrow.

This afternoon sat the Committee of Trade in the Duchy Chamber, where was appointed to be heard a great case between the Company of Merchants and the Cloth-workers. Mr. Rich of counsel for the Cloth-workers; but the other

party, *per* Sir Christopher Pack, pretended they had not notice, so it was put off till Thursday next, where both parties are to be fully heard by Counsel, if they please, and the Company of Merchants are to have a copy of the Cloth-workers' Replication, and they are to bring in their Charter, whereby they claim to export white cloths undressed, contrary to the statute of 8th *Elizabeth.**

* In 1566. It was entitled an "An Act for the Corporation of Merchant Adventurers, for the discovery of New Trade." The following passages, from a collection of State Secrets, first published in 1651, will serve to show the merits of this dispute between the two companies, (See also *supra*, p. 89) and the situation and conduct of the clothing trade two centuries ago.

"Now this year, (1612.) the *Cloth-workers*, being covetous of large employments, petition the king and council that there might go no more *white cloths* out of this kingdom, but that they might be all dressed and dyed here, before they went over, and the reasons of the petition were three. First, that the Hollanders making use of dressing and dying our cloth, sold us our own again, almost double, and we impoverished. A second reason, that whereas there are a multitude of poor in this kingdom, that wanted employment, if they might have the dying and dressing of those cloths, it would find them work, whereby they might be relieved; and there was no reason why any other should make benefit of that which we might make good use of ourselves. Lastly, whereas the trade of dressing of cloth began to decay, if now they might but have this, in process of time it may be restored, and they might have as good skill to dress cloth as the *Dutchman*. My Lord of Rochester, my Lord of Northampton, and my Lord the then Treasurer, were great agents in this business, and were thought to have been promised great sums of money to accomplish it."

"1614. The Cloth-workers still persisting in their suit, and having such friends to stand for them, and Alderman Cocking, a rich merchant, to back them, at length they obtained what they desired, and *Proclamation* goes forth, that no more *white cloths* shall be carried over undyed, or undrest, and for this purpose the old charter of the *Merchant Adventurers* is seized into the king's hands, so that that company falls to decay. Now the *Dutchmen* begin to murmur against the English, and make *Proclamation* there, that no man shall buy any such *cloths* as come over so dressed and dyed. Whereupon the English make a new *proclamation*, that no man shall transport *wools* out of this kingdom. These things fed some with hope of some farther troubles, yet, nevertheless, it is so ordered by the council, that all things are pacified, and some

I am clearly satisfied, upon the whole matter, that the Cloth-workers are injured highly, and eaten up in their trade; but the merchants, by their influence and power at court, have always mastered them; and by an injunction always stopped their proceedings: insomuch, that the statute was altogether useless to the poor Cloth-workers. Mr. Hindmore engaged me to be there.

In the Speaker's chamber sat the Committee for Recusants, Mr. Bedford, Mr. John Goodwin, Colonel Wilton, Sir Richard Onslow, and others, and myself. I pressed much to reduce the manner of conformity, and seisure, and process, &c., to be in the old way, but was over-ruled by the Committee. Mr. Croke and Mr. Pedley were engaged to be there, but they came not. I hope they will never carry it in the House. Mr. Attorney-General, and the Speaker, and a great many more will be utterly against it. Mr. Bedford and Mr. Butler are both receivers,* and help to drive on the business for the benefit of the auditors.

Friday, December 12, 1656.

An Act for taking away purveyance, and compositions for purveyance, was this day read the third time, and, upon the question, passed; and ordered to be offered to his Highness the Lord Protector, for his consent. †

Per Sir William Strickland. Resolved that the Bill for Acklam to pay his debts, be read to-morrow morning.

Upon the order of the day.

quantity, amounting to a certain number of *white cloths*, are suffered to be transported, as well to give content to the *Hollander*, as satisfaction and employment to some young merchants, that had entered into this trade, by which means those clamours are a little stayed, yet, nevertheless, great impression of envy is between these two companies." See "Truth brought to Light by Time, or the most remarkable Transactions of the first fourteen Years of King James's Reigne." (1692) p. 36,78.

* "Receivers of the Public Revenues," at a salary of 300*l. per annum* each. See *Parl. Hist.* xxi. 3, 6.

† See *supra*, pp. 20, *note**, 81.

Mr. Speaker twice read the question for the smaller punishment.

Mr. Bond and *Mr. Bampfield.* The proper question is for drawing up a Bill of Attainder, and that the person should suffer death. It was first moved, and by the Orders of the House it ought to be put, else you exclude their votes that are in the negative, (if the question be put for the smaller punishment) for then he shall not be punished at all.

Alderman Foot and *Major-General Goffe.* The first question is most proper; for, however you have drawn up another question; and offered it, the sense of the House has gone as much the other way.

Lord Strickland and *Colonel Rouse.* The question for the smaller punishment ought to be put, for the sense of the House has gone that way.

Colonel White. You should put the question whether that question should be put. This will determine it; you having fully debated the business already.

Mr. Ashe, Junior. If that question be put, it cannot be adequate to the offence. If you adhere to your former vote, that he is a horrid blasphemer, you cannot go to less than the punishment by death. It is death by the common law, blasphemy and heresy, and it is true till 2d *Henry* IV.* there was not a statute for it; but the law is the same.

Mr. Robinson. By this rule all the protestants of England may suffer death, for I believe according to that rule, we shall be all heretics.

Mr. Bampfield and *Major-General Goffe* called him down: he had spoken before, viz. upon Tuesday night, at the post, near the bar.

* *Cap.* 14. *Anno* 1401. This was the Act *De heretico comburendo,* of which the first victim, and, according to *Stowe,* "the first man that suffered death for religion in England," was "William Sawtre, parish priest of St. Oswyth in London." The last victims were two Unitarians; the warrant for whose execution James I. professed to sign *ut Zelator justitiæ et fidei Catholicæ Defensor.* See "A true relation of the commissions and warrants for the condemnation and burning of Bartholomew Legatt and Edward Wightman, the one in West-Smithfield, London, the other at Litchfield, in the year 1611." annexed to "Truth brought to light by Time," (1692) pp. 1—15. The Act was repealed in 1677.

Mr. Bedford. He did not speak to the debate, but only to the order as I remember; and he was called up against his will.

Sir William Strickland. We must, in a matter of this nature, dispense with our orders in this case, and give every man his freedom to speak. I desire he may speak.

Major-General Whalley proposed that he might be heard, but not upon these grounds.

Major-General Disbrowe. Till we be of a better temper, so as to hear one another speak with patience, I would have us lay this business aside, and go to something else.

Major-General Kelsey proposed that he might be heard.

Mr. Church stood up to speak, but Mr. Speaker called him down, unless he spoke to Mr. Robinson's speaking.

Mr. Robinson. By that rule which Mr. Ashe offered, we must all suffer death. For the law he speaks of was made in the time of popery, when we were all accounted heretics and blasphemers. I desire to know whether, if the Papists should come to be our judges, we might not all suffer by this law. I like it not, to leave it arbitrary to the judgment of after parliaments to determine what is blasphemy. I shall not undertake to argue the merit of the cause. It has been fully debated. I cannot agree to that punishment by death; nor to dismember him, which is worse than death, for it is equal in torment. I had rather err in point of mercy, than exceed in justice.

I can freely concur with your question, and I think that will answer your end. For it is idleness has brought the fellow to these high notions; whereas hard labour will bring him to sleep, and consequently to settlement again. I would have you make him a false prophet as to the foretelling his death. I strive in all things to personate Christ. Let us make him a liar.

Mr. Bodurda. I question whether you ought to put either the one or the other question: for, by this means, you tacitly admit the power of the civil magistrate in matters of religion, which has been also debated. I conceive, under favour, that though this House may make a law, yet they cannot do it

against the law. They are to keep to the rules of justice. I cannot say this person is worthy to die, so much as I understand of the business. Pardon my confusion, because of the complicateness of the question. I never heard of any punishment that had more than two ends:—1. *Reclamatio.* 2. *Exemplum.* If you put him to death you bar Reclamation. For Example: It is not likely to reclaim his followers in their errors. It will rather confirm them; for what he told you at the bar, I suppose, he has told his disciples also,—that he must lay down his life. I cannot say this is an offence against the law of nature, but rather against the law of grace.

I cannot say the text is clear in the Old Testament, for to put a blasphemer to death.

However, we are under a Gospel administration, and no rule nor warrant there can be found for his punishment. I know nothing he has professed in the letter, against the law. The inward thoughts and opinions of men are not to be punished in this world. This is but only opinion in him.

I remember what was reiterated six or seven times by Mr. Bampfield, "The mind of God was clear to him."* If you should call Nayler again, haply he would also say, "The mind of God was clear to him;" and it may be proved just, by as many texts. I appeal to all, if any divines or others have been sent to discourse with him upon his opinions, or that he has been at any time told that his life was in danger, which was always the course with heretics, to use all endeavours, again and again.

I am also against your question for the smaller punishment, not that I would not have him punished at all. It will look very ridiculous upon your records.

Proceed either by your judicial or legislative way. I doubt whether you have all the power of the House of Lords transferred to you, or especially in this thing. You did take off the grand and high delinquent, the late king, by your legislative law, but this was just.

I deny that any part of the Report, as to his excommunication, was fully evidenced to the Committee. But, if he was

* See *supra*, p. 9

excommunicated, this makes more for James Nayler. If you punish him for this, you must punish twenty thousand as well as him. You must punish all the Jews; for those that never were of a church are all one with them that are excommunicated; else, I dare be bold to say, you do unjustly. Will you suffer the Jews to walk upon the exchange that deny Christ, and say he is an Impostor, and put this man to death that acknowledgeth Christ, and all that is in the letter? I would have him either transferred to law, or, otherwise, make a speedy law against blasphemers, and you may soon overtake him by it; and in the mean time keep him close prisoner.

Mr. Bedford. If I could be at peace in my conscience in this thing, I should not have troubled you; for he that justifies the wicked, and he that condemns the innocent, are equally guilty.

It is told you that it is not granted whether the civil magistrate have any power in matters of religion. I hope there are few in this House that will deny it.

If I should not bear my testimony against this person, by telling you he deserves to die, I should be afraid to go out of this House.

I conceive, though we be under a different administration, yet the equity of the old law still remains to us, be it judicial or otherwise.

After Moses and Aaron had put in ward the person in *Leviticus*, God decides the question, he shall die. I would fain have it answered, whether God has not by this made a law. The other text for gathering of sticks, is the like.

It was very well opened to you, that place of *Zechariah*;* and I confess it much satisfies me, as an explanation of the law. As to the objection, if the law in *Deuteronomy* must now be observed, then the father and mother must thrust the blasphemer through. What is understood by the fifth commandment? Is not obedience to the magistrate and all superiors included under the title of father and mother? But, from Gospel rules, I am satisfied in this sentence, which I am ready to give upon this person.

* See *supra*, p. 100.

Heresies in the Gospel are enumerated under the works of the flesh, and so to be punished by the magistrate. Let it be made out to me that a blasphemer is not an evil doer, then I will agree the civil magistrate has no power to punish. Where is there a rule in the Gospel to punish an incestuous person, or a murderer? Yet I hope none will say these ought not to be punished with death. The equity of the law of old, is the foundation of our law against such persons.

That parable of the tares and the wheat growing together, cannot surely extend to the impunity of blasphemy. It may as well reach to murder and adultery, for David committed both, and yet became of a tare good wheat. It is clear to me that God's honour is more at the stake in this thing, than ever it was in this nation. It was prayed for you by the minister* yesterday, that God would clothe you with zeal. I beseech God to direct you to do things for his glory. For my part, I dare not but freely deliver my opinion, that this person ought to die, and that is my humble motion.

Major-General Kelsey made a long repetition of the former debates.

The gentleman was mistaken who said the first punishment of sabbath breaking was not till the person was taken gathering of sticks. The law was made before, that the sabbath breaker should die the death. Yet so tender was Moses in the case of blood, that though he had a law for it, he did not do execution till he had asked counsel of God. There are but four texts, four examples in Scripture in this case; yet God, in them all, was consulted.

There may be a higher blasphemer than this man. He that cursed God was put to death; but you will hardly bring that to this case.

Nor was that blasphemy punishable, by the principles of nature, with death, till the law was instituted. Though the light of nature convince men of the sin of blasphemy, yet not of the punishment; though the sin was the same from the beginning against the Deity. This is a very high blasphemy, and a dishonour to God, and scandal to Christian re-

* Probably the Chaplain of the House.

ligion. But it cannot possibly be reduced to that case, so much insisted upon. A vast difference between this, and that of cursing the Creator. Conscience would fly in his face; but to resist or speak evil of Christ, is not so great a blasphemy, for we cannot receive him unless it be given us of the Father.

No body will be against exasperating this offence under the Gospel; but who shall be judge? I would fain have those gentlemen make it out, how those texts in the Old Testament and the New, do *quadrare*.

I hope that common law is out of doors, that was but too common. We shall never rake that out of the ashes. It was so common, that it had left no Protestants in England. They were the heretics which that law designed as the gentleman mentioned.*

It may be any man's case here. He knows not how to walk securely; if a man shall be punished by a law *ex post facto*. To make a law in any case to this purpose is dangerous, much more in a matter of this nature, which is so dark and difficult to know what the mind of God is in this thing. The Christians in New England, I had it from a good hand, do much wonder at the zeal of this Parliament in this case.† I grant this is no argument to us, what they do; yet it may serve as well as that precedent which was urged to us from the Parliament of Burgos. [*Bourdeaux.*] ‡

It is greatly to be doubted, whether this person that has so far apostatised and fallen upon the rock, but he shall be broken in pieces. I have little hopes of him. Yet who can tell what hard labour and humbling of him may bring him to; but to take his life I cannot agree.

Colonel Briscoe. The distinction of blasphemies offered to you, may be good in other cases; but, under favour, in this case there needs no distinction.

* *Supra*, p. 118.

† Yet in this year (1656) began the *New-England* persecution of Quakers; which made " an Indian Prince" exclaim " What a God have the *English*, who deal so with one another about their God!" See " Abstract of the Sufferings of the People called Quakers." i. p. 347.

‡ See *supra*, pp. 98, 100.

The Turks punish the Christian for blasphemies, and so the Jews. The arguments drawn from the consequences are, 1. No natural consequences, but only accidental; so that we ought not to fear any danger from that precedent. 2. It is said, he is under a delusion, therefore to be pitied. And say he does it, *ignoranter*, not *per ignorantiam*: this should rather aggravate than extenuate. Do we not say in Indictment for murder, "by the instigation of the devil?"* I appeal to yourself.

Again. This man's offence is more than an Atheist's or a Pagan's, for he had received the light; which divines call a species of sin against the Holy Ghost.

My reasons why the person ought to die:—

1. I presume the common law, in this case, may be in force. The difference was *de modo prosequendo*.

You may proceed by the legislative power, and you cannot take a better rule than that in the Old Testament, your Master's rule, which is like *ipse dixit* with Pythagoras's own scholars, or like *est Aristotelis* in the University.

But it is said, that of cursing God is a greater blasphemy. I grant it to be so in itself, but the circumstances of it may extenuate; for it was in his passion that he committed that cursing; but this offence of Nayler's is deliberate. The punishment in that text is reiterated, *morte moriatur*.

That of death for gathering sticks on the Sabbath-day, was very well answered to you by the gentleman over the way. That was but *singularis*, and so ought not to be drawn into precedent.

3. This man's principles and practices are destructive to human society, as by destroying those of their own sect. Do not they all hold against the essence of Government?

4. How pernicious have these men already been; how spreading, infectious, and contagious. The magistrates are nursing fathers, and ought to see to this. They increase daily. They have neglected the opportunity of all admonition, and so are left to punishment.

* See *supra* p. 60.

5. It robs God of his glory: instance Achan's case, &c., and God will not give his glory to another. He is jealous of it. I am as much for mercy as any man; but in this case, I cannot go less than death; but with this caution, that I would have him reprieved for a month, or six weeks, or longer, and send some divines and others to him, that, if possible, he may be recalled and restored, &c.

Lord Whitlock. Adjourn, for I see many desire to speak; and in this weighty business it is fit every man be heard out, which you have not time to do now.

Colonel Shapcot stood up to speak, but was cried down, but cleared himself that he had not spoken.

Sir William Roberts. If you hear Colonel Shapcot to the merits of the cause, you ought to hear Lord Whitlock first, for he only moved conditionally to adjourn, otherwise, that he might speak.

Colonel Shapcot. I shall not trouble you long. I hope it is agreed upon on all hands, that by the old law this very blasphemy is punishable by death. The question is now, whether you may pass that sentence upon him. In my own private opinion, I am satisfied for this offence Nayler ought to die.

But I sit here in a court, and upon that account I cannot give my vote that you shall pass a sentence of death upon him; that is, if you proceed judicially. I doubt you, having not a law, cannot properly do it in this way.

My motion was to go in the way of a Bill. Then you might have properly passed this sentence upon him; but you are out of that way now.

For my part, I think the smaller punishment will be sufficient disgrace to the offender, and that would content me. I am not satisfied from any precedent or law, now in force, that you can proceed judicially to work in this matter. Now that the power of the House of Lords or the Ecclesiastical power is in this house, I very much doubt whether you can take up the legislative power in all cases. Those precedents, before cited, do very much differ from this case in my judgment.

The power sticks most with me of any thing. I confess, if I were satisfied in that, I should be of another opinion. But if you please to put the first question, it will soon be decided, and you must come to that at one time or other.

Mr. Nathaniel Bacon. I am for propounding of a new question. Otherwise, you exclude their votes that are for a higher punishment; for if they give their negative, and it pass, then the fellow shall have no punishment at all. But seeing that many stand up with a desire to speak, and others will speak to it, I desire you would adjourn the debate till to-morrow.

Resolved, That this debate be adjourned till to-morrow.

We were at dinner with Lord Richard Cromwell, per special invitation; Mr. Bampfield and divers others. Lord Richard was very clear in passing his judgment that Nayler deserves to be hanged, and he said he very much slighted Shapcot's motion. He, for his part, was clear in that Nayler ought to die.

This afternoon the grand Committee, but I was not there.

Saturday, December 13, 1656.

A Bill for the better ordering and governing the makers and workers of broad mixed woollen cloths, within the West-riding of the County of York, and for making them a body politic and corporate, was this day read the first time.

Mr. Robinson. If this Bill pass it will be very prejudicial to the City of York, and others of the Riding, and the adjoining wool countries.

This is a mere monopoly, which will not only destroy the wool grower, but the poor clothier; for it seems that none shall buy or sell any wool but such as are free of this corporation. It will make less manufacture.

Sir Henry Vane brought in a Bill to this purpose, in the Long Parliament, for Kent, but could not get it to pass. One law through the whole nation may serve for the regulation of

one manufacture. We have laws strict enough already in these cases, as strict as any, save in the laws of tanners.

Mr. Ashe, the elder. I do very much approve of this Bill, and desire it may have a second reading. I gave you the reason before why our manufactures are almost lost, and snatched into Holland only for want of regulation.

He has got 3000*l.* per annum, and is worth about 60,000*l.* per clothing.

Sir William Strickland. I have something to say to this Bill, but I will not hinder your greater business. I desire it may be laid aside and seriously weighed.

Lord Lambert, who brought in the Bill. I desire it may be read again, and the inconveniences considered. If it be not for general good, I shall not desire it. The most part of my poor fortune their depends upon the rate of wool.

Resolved, That this Bill be read the second time on Wednesday.

Lord Whitlock. I have a privilege to offer to you, which will take but a little time. A new member is elected for Ryegate, in Surrey, and the sheriff refuseth to make a return. I desire it may be ordered by the House to make a return.

Lord Lambert. I believe the fault is not in the sheriff. The election was but on Monday, and he must have some time.

Mr. Goodwin. That second elections differ from the first, for in the first, the sheriff has twenty days for the return; in the second, he must return without delay.

It seems there is a difference between Sir Thomas Pryde, and the party that is duly chosen, and some call it Sir Thomas Pryde's modesty, that will not return himself; but Mr. Highland said, Sir Thomas Pryde would fain be returned, but he ought not.

Resolved, That the sheriff do return the Indentures before Monday next.

Resolved, That Irish business be upon Tuesday next, upon motion of Major Ashton.

The Order of the day read.

Mr. Speaker. Read the question for the smaller punishment.

Mr. Church. The Quakers are not only numerous but dangerous, and the sooner we put a stop, the more glory we shall do to God, and safety to this Commonwealth.

When I sat in the last Parliament, there was scarce the name of these; but their increase since is incredible.

Whatever they pretend, they cannot be a people of God. Christ's spirit is a meek spirit, but they are full of bitterness in reviling the ministers and magistrates.

The people are amazed very much (as I am informed) at our slow motion in this business. They know not the reason. For my part, I incline rather to the corporal punishment.

"Because thou hast spared a man," &c. 1 *Kings*, 20, "that should have died," &c. "therefore," &c. I must say as Jehosaphat said, 2 *Chron.*

Take heed what you do, for you judge not for men, but for God. We must one day answer to God for all things we do; even for this business; so that I cannot marvel at our care herein. The love of Christ constrains us. If we have love to Christ, we cannot suffer him to be dishonoured. We must not do our own will, but his will. I pray God reveal it to us what is his will. If he have said, the offender ought to die, we ought not to spare him. I pray God direct us.

*Lord Whitlock.** I agree with the gentleman that spoke last, that if it be the will of God that this person should die, we ought not to spare him; but the question is, whether it is the will of God or no; whether there be a law of God. For my part, I think there is no such law. I have read the text in the original in *Leviticus*. It signifies as much as a cursing

* This appears to be a short report of an extended argument by Lord Whitlock, probably preserved among his papers, and from which a few quotations will follow. It is annexed to the "Proceedings in the House of Commons," as having occurred "in the debate upon the question, whether James Nayler should be punished with death." See *State Tryals*, (1776) ii. 273—276.

or denying Jehovah. Moses was a wise man, yet he would do nothing in it without the advice and counsel of God.*

I conceive this was no standing law, but only binding to the Jews. The morality may extend to us, but in the *modus puniendi*, that is not moral.†

I do not understand any thing that James Nayler said to be the denying or cursing of Jehovah, God, or Christ, so not within that text. 24 *Leviticus*, 16. He acknowledgeth Christ that died in Jerusalem, to be his mediator. He has committed a very heinous and execrable sin in suffering adoration to be done to him. He says Christ dwells in him.‡ This is an opinion held forth in many places. The Lutherans held the ubiquity of Christ;§ we are not *filii*, but *filius Dei*.

That account of excommunication is much mistaken.

* "If by the law of nature, a blasphemer is to die, how comes it to pass that Moses was so doubtful in the case of the Egyptian, in the 24th chapter of *Leviticus*? He put him in ward, and asked counsel of God, what should be done with him.

"Moses was a man of great knowledge and wisdom, and as able to understand the law of nature as any of us are; and if the case of the Egyptian had been against the law of nature, he was surely capable to have found it out, and not to have made so much difficulty as he did of it, so as to know the immediate pleasure of God in it."—*State Trials*, ii. 273.

† "Very learned Divines are of opinion, and I think it not to be confuted, that no part of the law of the Jews doth bind any other nation, but that part of it only which is moral. And none hath ever yet affirmed that this or that punishment of any offence is moral, though the offence itself be so."—*Ibid.*

‡ See *Ibid.*

§ "The Lutherans do hold the ubiquity of Christ in such sort, that the news of James Nayler's being put to death for these offences would not be pleasing to them."—*Ibid.* 275.

Ross mentions, as one of the "Sects sprung out of Lutheranism," the *Ubiquitaries*, who "hold that Christ's humanity, as well as his divinity, is every where, even in hell."—*View of Religions*, (1696) p. 164. See also, on the controversy concerning "the omnipresence of Christ's body," Mosheim's *Eccles. Hist.* (1768) iv. 469.

He is not delivered over to Satan,* to be understood of the devil.

I am not satisfied by any thing in the law of God, that we ought to proceed against this man to death. Nor am I satisfied the magistrate, in all cases, ought to be judge of offences against the law of nature.†

But by the common law, *lex terræ*, this person is punishable. I have seen indictments in the Upper Bench for lesser matters, for broaching opinions to raise sedition amongst the people, and I wish we had not meddled with this business, but sent him over to the Upper Bench.

But for us to pass sentence of death upon this person, I know neither law nor precedent for it.

It will be of a dangerous consequence for you to make a law for punishing of an offence by death, which was not so punishable before. One parliament may count one thing horrid blasphemy, another parliament another thing. The word blasphemy is very comprehensive. There may a time come, when the word blasphemy may be as far extended as was heresy, in the case, as in *Hen.* VII., where a man was condemned for a heretic, because he said he did not know whether by the law of God tithes were payable or no.‡ We ought to look for our posterity, and the danger to leave such a precedent upon your records. I am very well satisfied that the lesser punishment will be adequate enough, and save the honour of your vote and your time too; or, to satisfy those gentlemen that are for his death, you may add to your ques-

* See 1 *Cor.* v. 5.—1 *Tim.* i. 20.

† "If the parliament shall adjudge that it is necessary, for the being and preservation of the people and commonwealth of England, that James Nayler be put to death, then he ought to die, by the law of nature. But I suppose that no gentleman is of opinion, that it is necessary for the being and preservation of the people and commonwealth of England, that James Nayler should be put to death; and therefore, on that head or principle of the law of nature, he is not to die."—*State Trials*, ii. 273.

‡ "But now, I believe, some are inclinable to think, that to say, *tythes are due to the parson*, is a kind of heresy."—*ibid*, p. 275.

tion, that the person shall stand committed till he recant, or till the Parliament take further course for his more exemplary punishment, and this may happily give more satisfaction, as well within doors as without.

Mr. Bisse. If you put the question for the smaller punishment, you exclude all their votes that are for the higher, for they will give their negatives; and if they carry it, then the person shall have no punishment at all. I desire you would either put the first and proper question, or put the question whether this question shall be put or no.

Sir William Strickland. We ought to have a special reflection upon what we have done in our vote for our directions in the punishment. I know nothing in the Report, but what the party confessed himself at the bar; from his very *reum confitentem*, was sufficient convincement to me in voting the offence to be horrid blasphemy.

For my part, I am clearly satisfied in the offence, that it is as heinous as can be; but I am not so clear in the manner of punishment. For if we take our rules from those texts that have been urged, I doubt we must also observe the rules in other cases, as to make Sabbath breaking and disobedience to parents, death. I am not clear how to execute these laws in the one, and not in the other.

If *salus populi* were concerned, then *suprema lex* ought to be resumed; but in this case the precedent may be dangerous I hope we shall provide a way, for the future, to nip these cockatrices in the egg.

I cannot, without doubting, agree to those that would have him punished with death. *Quod dubitas ne feceris.* I shall honour those persons too, while I live. I shall submit to the smaller punishment, though I am not satisfied of the adequateness of the punishment. I would have this man so restrained, as that he may never do more harm. I would have him perpetually imprisoned, and that is a kind of a civil death: but for the other punishment, I do very much doubt in myself.

Mr. Nathaniel Bacon. I cannot be satisfied but that this man's offence deserves the highest punishment.

The light of nature teaches a Deity, and a punishment for the dishonour of that God; as well as the honour.

How did the heathens put to death so many martyrs?

1. For disobeying their idol gods, but by the law of nature.

2. Nebuchadnezzar, by the same law, put the three children in the fiery furnace.

3. The case of Gideon and his men, in Judges (vi. 25—31.,) for pulling down the altars. They durst not do it by day. But they soon knew who had done it, and said, "Bring them forth that we may kill them."

But not only the law of nature, but of God, teaches us to vindicate the honour of God, and God in three persons, and no other God.

I cannot understand the *majus* and *minus* from those that say the cursing of God, as to say he is cruel, unjust, or the like, is a greater offence than this blasphemy before you. This destroys the second person of the Trinity, and sets it up in a creature, so that it is not only a dishonouring of God, but a supplanting and taking him wholly away.

This is an offence not only against the law of nature* but against the light of the law of God, revealed in the Scripture, which is the highest light in the world.

Does not he say that God-man dwells personally in James Nayler, and ought to be worshipped. Is not this utterly against the light manifested in the Three Persons of the Trinity and God. If this be not the highest blasphemy that is, I know not what it is. He does (as much as in him is) destroy the very foundation of our faith and religion. This seducing of his, comes clearly up to that of *Deuteronomy* xiii., and in *Zechariah* too. I say this case comes even to those texts in *Deuteronomy* and *Zechariah*,† for any thing I have heard to the contrary.

If the Jews ought to put to death a blasphemer, I know no reason but we Christians ought to be as tender of the honour

* Whitlock argues, that "the crimes of James Nayler cannot be against the law of nature, because they are against the second person of the Trinity, the knowledge of whom is not by the law of nature." *State Trials*, ii. 273.

† See *supra*, p. 121.

of God as they. I know no difference. *Ubi lex non distinguit, non est distinguendum.* We find not the law repealed, so it must needs be of force, being perpetual. As to that objection of the Sabbath-breakers to be punished with death under the law, I grant they might have brought other texts to that purpose.

I have read authors, that that law was only to continue while the children of Israel were in the wilderness.* Or, admit a man should now, in a presumptuous and wilful manner break the Sabbath, if the magistrate should punish him, it may not seem cruel in the eyes of God. If a man should sin against God, who shall plead for him.

It has been said that the Turks and Jews are amongst us, that blaspheme and deny our God and Christ. Must we put them to death,† I know no reason but the magistrate should punish them with death, if Turk or Jew come and blaspheme our God: I hope they would not be tolerated. But it is said there is no law now against blasphemy. I grant; but, *de facto*, there was such a law. I hope none will deny it. I hope the abuse of it, and turning it upon the Lollards, does not take away the law.

Who shall be able to plead, where God has made a law, that this law is repealed. If God should ask me this question, how shall I answer it? If I tell him of that meekness, &c. spoken of in the Gospel, will God say where had you a rule to spare his life. I desire that the question may be put for death.

Colonel Kiffen. I am very much satisfied by the whole matter, that this wicked, vile wretch is guilty of whatever you have voted him to be; a horrid blasphemer: but I am not convinced by any thing I have heard that he ought to be punished with death. We ought all to be zealous for God; but our zeal must go by a rule.

The honourable person gave the grounds of his opinion under these three heads. The light of nature, law of God, and law of the land. I shall answer them briefly.

* See Heylyn's "History of the Sabbath," (1636,) Part i. *passim*; Paley's *Mor. Phil.* B. v. *ch.* 7.

† See *supra*, p. 108.

1. If the light of nature cannot lead a man out to the knowledge of Christ, are we, by the light of nature, to put such an ignorant person to death, for not knowing what he ought to know.

2. The law of God. *Answer:* these laws were immediately from the mouth of God, stamped upon, and peculiar to that nation, *Deuteronomy* xii. If the Jews, by the light of nature, might have charged Christ with blasphemy, surely they would have rather cited that general law, than to say, "We have a law," &c.

That prophecy of *Zechariah* sticks more with me; but those dark prophecies may be mistaken by not distinguishing of the times. Great mistakes arise from this.

I grant, that by the father and mother thrusting the child through, the magistrate is understood; but I hope none will say that the parents are excluded: and if all those circumstances of that law, must be pursued, the parents must thrust him through.

I grant the Scriptures are a great light, as that worthy person said, but not the only light, for there must another light concur, else we shall fall short of the knowledge we aim at.

Answer to text, *Leviticus* xxiv. Their conclusion differs from their premises; for they say, by that law Nayler ought to die*; yet, upon his repentance, he shall be pardoned. I am not of their opinion. If the law be positive, I submit it to their consciences whether they can dispense with that law. If I were so convinced, I ought not to spare, nay, I should not spare! my child, or the wife of my bosom

The Jews could not find any thing in their law, whereby they could condemn Christ of blasphemy. He bid them look into their law.

Was not Gamaliel a man learned in their law? It is not to be doubted that he wanted zeal to do it; yet he bade them beware what they did.

Answer to that of *John* v., about cutting off the branches. This was the great text made use of in Queen Mary's time. It was those that would suck your blood, greater enemies to

you than James Nayler, that put any such interpretation upon it. I hope that gentleman that cited that text, will not say that every man that is cut off by excommunication, should be thrown into the fire.

Answer to that text in *Revelations*, a charge against the Church of Thyatira suffering Jezabel and Balaam. It is true, God does highly reprehend them for these things; but does God say, "I have given them time to repent," &c.

It is true, "God forbid that we should sin because grace doth abound." As for that text of our Saviour's pardoning the woman taken in adultery: it is said, that he was Lord of all, and might dispense with that or any sin, as God did with the Israelites in Egypt. I dare not be of that opinion, that Christ forgave that sin, for this excludes his full satisfaction, &c.

I desire the Question may be put for the smaller punishment.

Mr. Bond. Adjourn this debate till Monday morning.

Mr. Godfrey stood up to speak to the matter; but, being cried down by a noise of adjourning, so turned it to speak to the orders of the House. Desired them to rise.

The Question put for adjourning the debate till Monday.

The House divided upon this Question.

The *Yeas* that sat were 108. Lord Eure and Colonel Sydenham, [Tellers.]

We, the *Noes* that went out, were 175. Sir John Reynolds and Colonel Fitz-James, [Tellers.]

Resolved, That this debate be adjourned till Monday morning.

In the painted chamber sat the Committee upon Rodney's Appeal against Cole.

And, upon the Question whether there was any personal miscarriage in the Commissioners of the Seal in that business,

There was great clashing between my Lord Lisle and Lord Whitlock, contending where the blame should lie. Lord Lisle charged Lord Whitlock highly, by several circumstances, that he was consenting to it; but Lord Whitlock justified himself, and so did Rodney's petition clear him:

for it said, one of the Commissioners did dissent, and named Lord Whitlock particularly; and the Committee were much satisfied with it. But high words passed between them, especially on Lord Lisle's part; the other was more modest.

Lord Lisle retired, and the Committee came to further debate in the business. The Master of the Rolls laboured to smooth it over, and would have had the petitioners relieved, and the Lords Commissioners clear, for he said the miscarriage happened only by misinformation.

There was one Mr. Thorne, of the Temple, Cole's Solicitor, examined to the seal of the statute, whether the seal wanted not all the wax, and whether he did not tell a member of the House that one Perin, an Attorney (that is now dead) did put the new wax upon the label of the statute. He denied that he said any such thing, but Captain Mason affirmed it to his face, and the Master of the Rolls directed that a member of Parliament ought in evidence to be preferred, for he is under an oath to speak the truth, &c. (Query, what oath a member takes.) Mr. Cole was there, and moved that he might be heard by his counsel, but I could not stay the issue.

This week, one of the seniors of Gray's Inn, viz. Wingate,* that abridged the statutes, died, and also one Mr. Miller of the same house.

Monday, December 15, 1656.

A Private Bill read, but I was not there.

This day his Highness conferred the honour of knighthood upon Alderman Robert Titchborn, present Lord Mayor of London. The like also upon Lislebone Long, Esq., Recorder of London, *vide supra*, when Sir Wm. Lockhart and Sir

* One of the Members for the County of Bedford, in the Protector's former Parliament. He was a mathematical writer, and had been appointed English teacher to the Queen of Charles I.

James Calthorp were knighted in Journal 11th or 10th Dec' *supra* in 13th fol. back.*

Colonel Edwards was speaking when I came in, about Nayler's business. He had almost done, but concluded that he could not agree to a lesser punishment than the highest.

Mr. Butler. I am fully satisfied that the matter of fact is, in the whole, as it is represented. I was once more inclinable to mercy in this case than now I am. I am fully convinced that, *consideratis considerandis,* the matter in the lump deserves the highest punishment. The eyes of the whole nation are upon you in this business, and say, Is this the issue of your government and reformation? Nor are you only to take care of this person's punishment, but to suppress the whole growth of that generation, whose principles and practices are diametrically opposite both to magistracy and ministry; such principles as will level the foundation of all government into a bog of confusion.

But to the end unity in this house may be preserved, there being so much division, my motion is, that some select persons of both judgments might be appointed to find out an expedient to reconcile both.

Major-General Bridge. I confess this to be a very high offence; yet I am not satisfied that the offender should be put to death. I incline rather to the other question, which I conceive most to agree with the sense of the House, and will more answer your end in the suppressing of that party.

Mr. Pedley. I want words to express this offence, it is so high; but I cannot be satisfied neither from the law of God or man that this offence should be punished with death. By our law books, *Britton* and *Bracton*, &c., the writ lies *de heretico comburendo*,† but in this case the first offence is only abjuration.

By the law of God I suppose he is not punishable with death. That law was only positive to the Jewish nation; but, admit this law be moral or perpetual, yet the punishment was but temporary. It being but a circumstance which may *esse*

* See *supra*, p. 107. † See *supra*, p. 118. *note* *.

or *adesse sine interitu subjecti,* else you must observe the circumstance of stoning and all other circumstances.

As to that argument, that, by the law of nature the offence and punishment of blasphemy is directed. It is true, as the *Tusculan Question* says, all nations, by the law of nature, must acknowledge a Deity. Yet, because the heathens put persons to death for profaning their idols, that is no argument that the law of nature led them to it. No, it was the depravity of their nature, like their causing their children to pass through the fire to Moloch, &c. If the law of nature had dictated that, then Moses would never have asked counsel of God.

On the whole, I am not satisfied. Unless you make a law, for which you have no precedent, you ought not to put him to death. Go as high as can be in another way, and I think that may be more adequate, if not to the offence, yet to the making of him exemplary, and will gain your end as to the discouraging of that party (who haply will adore him as a martyr if you should cut him off by this censure), and falsify his prophecy of himself that he should lay down his life for this thing.

Mr. Godfrey. I shall willingly cast in my vote, to the abundance that has been spoken, with a saving to your time. I must crave leave to differ from that gentleman that spoke last, and all the rest that have spoken against his death, upon these grounds, that neither law of God, nature, nor of the land, is of force to punish this offender; and yet they conclude with a punishment. If by none of these, how can the conclusion agree with the premises? *Quo Jure* shall he be punished at all?

My opinion is, that as this offence is before you, by all the laws aforesaid, it is punishable with death; I say, by the law of the land also as to the sense and declaration of it.

To clear objections by way of premise. The arguments are either drawn from some defects in the moral, judicial, or ceremonial law, or rather from that which is mixed of the moral and ceremonial, or mixed of them all.

As to the observation of the Sabbath, which was either moral per law of nature, or *positivum* to the Jews, so it was *morale positivum,* and it was also *ceremoniale* as to the Jews. It has

been much pressed that if we observe a Jewish law, we must observe the ceremonies too. I shall prove it to you, that to punish sabbath-breaking by death was merely local and ceremonial. 16 *Exodus*, and in *Numbers*, gathering of sticks prohibited, and in another place their not being allowed to stir out of their places. I shall prove that law only to be *hic* and *huc*, while the Israelites were in the wilderness. God had given them manna, and they presumed to gather it on the Sabbath. Thence came that interdiction not to stir out of their places, their tents. From the like reason was their kindling of fire prohibited, which was merely local, to show them that their whole preservation and dependency was upon miraculous dispensations; both for their food, raiment, &c.

But when they came into the land of Canaan, they were free from this law.

The institution of the Passover was not intended to be performed by them till they came into the land of Canaan. They had no bread in the wilderness, neither leavened nor unleavened. They had no posts to sprinkle, nor doors, nor neighbours to call in, when they were in the wilderness. They were not tied to their places then neither, for they walked abroad to the temple. Our Saviour and his disciples walked in the fields, and plucked the ears of corn too. Nay, our Saviour went to dine with a Pharisee on the Lord's-day, &c. and allowed works of necessity.

Objection. We must, by this rule, make use of all the judicial law, as the water of jealousy, and so bring in witchcraft.

I grant this to be judicial, but it was partly ceremonial, for here comes priest, and tabernacle, and dust, and all, to the decision of this judgment. So that it is clear to me, that the whole ceremonial law is not introduced by this. Though we shall observe that part of the law which is moral or judicial, we need not observe the ceremoniality.

1. That it is *morale naturale*, for a blasphemer to die, as well as *moral positivum*, I shall prove.

The end of the heathens punishing dishonour to their gods by death. It was to vindicate the honour of their god.

But it is said, this was the darkness of their nature. I grant it, primarily, that it was darkness to make a stock or stone their god. But it was clearly from the light of nature that they understood a god was not to be dishonoured. How did the heathens know a god by this light? We may make a good conclusion from wrong premises.

Instance. Nebuchadnezzar and his idol god: his conviction, by a divine influence, that none ought to blaspheme the god of Shadrach, &c. and so I take it to be a *morale naturale.*

2. A moral positive.

Where the reasons of a law are moral, there the law itself is moral. xiii. *Deuteronomy*. A person is mentioned, whereunto your case is altogether applicable; a seducer, an impostor, &c. Yours is higher.

There the case is. If a man shall withdraw from God, &c. he shall die the death; "Thou shalt not spare thy wife," &c. Here it may be meant, by objection, that this is not to be done by a judicial manner.

Reasons why this law should reach all nations. 1. "Thou shalt take away iniquity, wherewith the land is defiled." Is there no land but the land of the Jews to be defiled by this iniquity? It is as great a defilement in any nation under Heaven where God is worshipped, as to the nation of the Jews; and the same reason why the land should be purged, nor to be punished with less than death, when God says so. The highest sovereignty and majesty has declared how his own excellency should be vindicated. It concerns the Parliament, the nation of England, to take away this guilt.

2. "The Lord your God does prove you," does try you.

Reason. Whether you "love the Lord your God with all your heart." If so, we are under a serious trial, and temptation, indeed. Has God made this the character, the evidence of one that loves God, whereby he will try him? Are we not now under the same trial? What we will do with this offender, God expects it from us, as we love the Lord our God so to demean ourselves.

3. Reason from the text. "That Israel might hear and

fear, and do no more wickedness." If this be the way that God has made to awaken and stir us up from this wickedness, why should our reasons lay in the balance.

These are God's reasons; and our policies ought not to come in competition. This is against one part of the offence, viz. against a seducer, much more against the other part of the offence, the blasphemer.

Objection. But Moses was ignorant of this law of nature, by putting the man in ward.

Answer. God had undertaken to be the Supreme Legislator, as well as to the judicial part, as to the other. Moses did not suspend that it was to be punished with death. His consultation with God was only about the manner. He should be stoned to death. This was not to the moral part, but only to the judicial.

To clear it by an instance in Moses's own practice in another place. They found a man that gathered sticks in that. 16 *Exod.* Moses went to consult the manner of his death, which God directed. All the congregation should stone him. It is clear, he knew the kind of punishment, but not the manner, and therefore, and for no other reason, he advised and consulted with God.

Something has been said as to the law of the land. I shall speak in this with all humble submission to all those my learned masters and brethren in the law. Yet I hope nothing I shall offer shall oppose any thing they have said in the general; I should rather have been silent. To say that there is no law of the land, as to the manner of punishment, I do agree. But that there is not a law of the land to punish a blasphemer, and now in force, I must differ. I heard none say so, I think. I know no law nor statute which has repealed that law *de heretico comburendo.** Does not the common law declare the law against blasphemy, when it provides a punishment *comburendo.* Admit it differed in the hands whereby it was administered. The ecclesiastical power had it from the civil power, either by concession or encroachment.

* See *supra*, pp. 118. *note**,—137.

It matters not much which, but originally they had it. It is now returned and resumed into its public head whence first it flowed. I hope none will say it does *exarescere*. I cannot say but the ground and foundation remain. The sense of the common law is known as to the crime. To that it cannot be said to be a law *ex post facto*. The law you are now to make, is but to the modality. 1 Eliz. 1st chapter, 2d chap. indeed is repealed, but by that statute all ecclesiastical power is resumed to the crown, where heresy and its punishment are declared, so certainly blasphemy, which is the top. It is there directed what shall be heresy; relating to the Scriptures, the Four Councils, or a Parliament, or the Clergy in their convocation.

A provision is made there how it should be punished, yet it is still in the power of a Parliament to declare the punishment. I could rather advise you to proceed in your judicial way, as has been instanced to you in several cases.

Several arguments have been offered to you against punishment by death. I conceive it is no good argument from that text in *Zechariah*, that the Jews should be more zealous for God than the Gentiles. (God says, "by a foolish nation I will provoke you," the Jews,) to your zeal and jealousy for Christ.

If we expect their conversion, it must not be our impunity, but our zeal that must provoke them. If we would have the prophecy fulfilled, we must do that which is in order to the fulfilling it, provoke them to zeal. It is not expressed in mystical, dark, or obscure terms, but in plain expressions relating to the zeal of the civil magistrates, so zealous, that as to father and mother he shall not spare them. But that objection that it shall be done by their own hands is a clear fallacy. In another place it is said "Thou shalt kill her, even the wife of thy own bosom," or thy children. It is gross to understand that text otherwise than that thou shalt not conceal or plead for any such relation, under such an offence, not to make themselves executioners. That which is spoken against Eli, for honouring his sons more than God; he was a ruler, and yet spared his sons. That brought not only a

judgment upon his family, but upon the whole land. The ark departed. Let not, I beseech you, the tendering of your sons, the sons of Belial, though under your *pater patriæ.*

Your laws have provided against the sons of your nobles per statute 1 *Philip* and *Mary*, though repealed, they shall lose their ears and stand in the pillory.

Here is in your question no greater punishment provided for these sons of Belial, than for your own sons.

I beseech you, tender the honour of God in this thing, and divert the judgment from the nation. My motion is for a Bill of Attainder to be brought in, with punishment in it for death, as was first moved.

*Colonel Jones: Cons.** Adjourn for an hour or two for refreshing yourselves, and resume the debate.

Mr. Speaker. It has been properly offered you, by a worthy alderman,† that the proper question is for the higher punishment first. Otherwise you exclude their votes, and so he shall not be punished at all, which I hope none intends, that he shall wholly escape. And I must further keep you to it, that when the other question is put, you must not take liberty to speak to that too. I appeal if the whole matter of the debate has not been equal to both questions.

Mr. Downing. I gave my vote that this offender was guilty of horrid blasphemy, &c. and if it were to give again, I should freely give it; and, in my opinion, the offender ought to suffer death. But I hear most part of the debate to incline that this offender should not be punished at all, for, they say, it is not against the light of nature, &c. It is as clear to me, that, by the light of nature, blasphemy against a Deity may be as well discovered as that there is a Deity. The light is the same in the one as in the other. I am not satisfied by any thing I have heard, but that the civil magistrate has power as well in matters against the first as the second table. It is said, man need not punish, for there is an eternal judgment coming. By this rule no offence need be punished..

* One of his Highness's Council. † *Foot.* See *supra*, p. 118.

That story of the woman taken in adultery, sets forth no punishment at all to be done to her. Christ was not as a magistrate here; they would have had him at that. The like about dividing the inheritance; I have nothing to do in this case amongst you. The like case in the piece of money. He asks no tribute, but appears rather as a servant.

The Jews were come to that height of superstition, by their adoration at the mention of the name of Jehovah, as we were not long since arrived, at the name of Jesus,* comprehending the whole veneration of the Deity in that title. Paul was as well a murderer as a blasphemer, but nothing was done to him in either offence.

It is clear to me that this offender deserves death, but that there is any law of the land in force against it, I am altogether unsatisfied, having heard of doctors of the law declare themselves so freely in it.

If there were a law, I wish he had been left to it. True, Nebuchadnezzar, by the light of nature, made a law against blasphemy, and so I hope may you; but he punished none by that law till he had committed the offence.

Another instance very remarkable in Ahasuerus, upon that high disobedience of Vashti, which was the more aggravated in circumstances, it being at so solemn a time, and from and to such a person. Ahasuerus does not say "Let her die," &c. for such a high offence, and affront to my majesty. But what does he do? He advises with his princes and nobles. Said he to the wise men, What shall we do according to law? He goes no further. It is clear that that prophecy in *Zechary* relates to the calling in again of Jews only, though it may be analagous to the Gospel. But, if we had no better promise than that, our advice were dangerous, if you should come to make prophecies the ground of a law; nay, from that to condemn a man without a law. By this means we shall fall into James Nayler's principles, to act by our own light within us. I tremble to make this a rule for our proceedings, a bare dark

* The Nonconformists objected to bowing at the name of Jesus, in the Church Service.

prophecy. We must condemn every false prophet, every one that tells a lie.

I grant, these penal laws made against blasphemy, are in pursuance of the moral law; but how far are these penal laws binding to us?

There is not one commandment in the whole ten, that any statute in this land is made in pursuance of it. If so, they ought to be at all times alike moral, and not to be altered.

1. Sabbath-day not punished as the Jews did it.

2. Punishment of disobedience to magistrates and parents.

3. Murder. By the Jewish law, a setting upon one to kill him, though he did not kill him, it was death.*

The like concerning smiting a man. That law said, "If a man can but lean upon his staff;" but our law is more penal, for it is murder if he die within such a time.

4. Theft,—punished by them with restitution; it is death.

5 Adultery. Till of late not punished with death,† and that death different. All divines, as well protestant and papist, and others agree, viz. Perkins and others, that it is only in the power of the civil magistrate to vary the punishment according to the necessity. Else, what is left to them? How can they meet with the increase or decrease of a crime?

The Jews themselves, to come nearer, have varied in this. Solomon said, "He that steals for hunger shall not be regarded, yet he shall restore seven-fold." Here is a higher punishment than, at the first institution, upon the highest theft. David goes higher for theft, in the case of the ewe lamb, so that circumstances might aggravate such an offence to death. This is left as a record of David's justice. They have varied in the case of sabbath-breaking, for they allowed a sabbath-day's journey. He that gathered sticks was put to death; and in another place, (*Exodus* xvi. 27.) none were put to death for going forth to gather manna, which was a more general offence.

* This was made capital in England a very few years since, by Lord Ellenborough's Act.

† An Act had passed May 10, 1650, which declares, "that adultery shall be deemed felony, and punished with death."—*Parl. Hist.* xix. 260.

The omission of circumcision was punished with death ; but, in the 5th of *Joshua*, we find it dispensed with, because of the general neglect.

The like, in cases of adultery, have varied. The like, in cases of idolatry, have varied. All nations, all ages, have varied the punishment of such offences, according to the conveniency of times and seasons.

Know we not that this is the issue of our great liberty? Have not Rantism,* and other extravagant opinions, been all this while dispensed withal? There are thousands of this man's opinion, and must we take them all off by a law, or this person for them all, by a law *ex post facto*. It will not do your end. I am not satisfied that he should be put to death for this offence, but shall agree with the smaller punishment.

Colonel Sydenham, Sir John Reynolds, and Lord Jones.† Put one Question or other, that, for your honour abroad, you may put an end to it.

Two Justices of Peace could have ended it, and yet it has asked you all this time. For your honour without I would not have you defer it. The House is full enough to put the Question. You have great business upon you.

Major-General Skippon, Colonel Mathews, Mr. Nathaniel Bacon, and *Mr. Bedford*. Adjourn for a while, or till to-morrow, that the House may be full, before you pass a vote of this nature.

Major-General Disbrowe. If it were proper to restrain all from speaking any more on this business, I could wish it. I would have you adjourn till 11 o'clock, that, in a full House, this great vote may pass without further debate. I have observed nothing but repetitions five days together.

Captain Hatsel. We have had a very serious and Christian debate; yet many have a mind yet to speak to it. I would have none surprised in it. About half an hour since, it was moved to adjourn. Let us not take any advantage.

* See *supra*, pp. 29, 49.

† Colonel Jones. See *supra*. p. 143, *note*

For my part, I am for the lesser punishment. I desire you would adjourn till the afternoon.

Mr. Bond. You cannot deny any man to speak to it, so you cannot be ripe for the Question yet. I never knew any success of night or afternoon meetings, so I am not for adjourning till the afternoon, but till to-morrow morning.

Major-General Kelsey. Adjourn till to-morrow, and sit night and day till you come to a Question, and not leave it till you have done.

Mr. Margetts. Here is a gentleman behind me that says he has a speech of two hours to make, so that you cannot be near a Question. I desire you will adjourn.

Mr. Bampfield. You will spoil your Grand Committee for religion, if you adjourn till the afternoon. They have not sat these four days.

Major-General Boteler, Colonel Rouse, and *Major-General Packer.* Adjourn for an hour. It has been firsted and seconded, &c. Let that be your Question.

Sir William Strickland. I could very freely put this upon God's Providence for a Question, at this time, but that the sense of the House is against it; so I desire it may be adjourned till to-morrow.

Mr. Reynell. Adjourn till to-morrow morning.

Lord Lambert. The House will be emptier in the afternoon. Unless you send every man word, how shall they know?

Mr. Berkeley. I desire to second that motion.

Colonel Cromwell. This noble Lord looks upon what is before, but not upon those that are behind; (viz. in the gallery) so, from that reason, of the thinness of the House he cannot judge.

Mr. Highland. It was even now said the House was too thin to pass a vote, and now it is said to be full enough. I desire you would adjourn till to-morrow morning.

The Speaker was putting the Question to adjourn for an hour, but was cried down into the other Question, so

Resolved, That this debate be adjourned till to-morrow morning.

In the Speaker's chamber sat the Committee for Recusants, and perfected it for a Report *per* Mr. Bedford. Several exceptions were offered to parts of it, by Colonel Mathews, Mr. Goodwin, Mr. Berkeley, Major Porter, Sir Richard Onslow, and myself; but the Bill being gone through, it seems it was not regular to alter any thing.

Tuesday, December 16, 1656.

Colonel Richard Carter's Bill for selling Lands worth 3000*l.*, for payment of his father's debts and his. Read a third time.

Resolved, That this Bill do pass for a law.*

Mr. Robinson reported a very foul affront offered last night by James Noble, at the Committee for Drury House.

Colonel Twisleton. I had the chair, and never heard such language in all my life. I have known this fellow a long time. He was in Wales, and approved himself a very vile person. He showed himself so in Scotland, where he was in arms. I have observed him all along very prying at Committees. We, as a Committee of Parliament, presumed to commit him to the Serjeant-at-arms.

Resolved, To approve of what the Committee had done as to his commitment, and that he be brought to the bar.

Mr. Bampfield. Ask him who are the six knaves; haply he may mean some of us.

Sir William Strickland. This is a very high crime, and we ought to vindicate ourselves from this aspersion. I desire he may explain himself who he means by these knaves.

Sir John Reynolds. This is a civil blasphemy, and you know not what debate it may beget, and hinder Nayler's Committee; but I desire a new day for Ireland.†

Mr. Noble came to the bar and remained on his knees all the time, while the Speaker asked him several questions. He

* See *supra*, pp. 2, 81. Richard Carter, of Colomb Major, was one of the representatives for Cornwall, in this Parliament.

† See *supra*, p. 12, *note* †—127.

confessed most part, but said he was distracted to see such proceedings. He thought the Committee had had other work than to commit a poor mad creature. I care not what becomes of me, so the commonwealth be not cheated. He desired to be excused as to the naming of the six knaves. He said, he would know by what warrant they did it. If he was distempered, the justice of peace might have punished him, &c.

Major-General Whalley. I never knew such an affront offered to a Committee since I knew what a Committee was. I have faithfully served the Commonwealth in considerable commands ever since the wars began, but was never called knave nor cheating rogue in all my life. And this fellow named me for the first of those knaves. I have constantly attended this Committee, thinking it my duty to inquire if the trustees had cheated the commonwealth of 140,000*l.*, as Jervis's petition* set forth. It ought to be examined; but, indeed, finding that nothing would come of it, I left the Committee. I was a purchaser myself, and set forth of what and at what values. I take this very much to heart, to be so affronted. I was always accounted for an honest man, and the country had not sent me hither but that they thought so. I hope you will vindicate us in this. I care not what becomes of us in our other relations, so our credits be preserved. He was twice cashiered the army, and is more knave than fool.

Major-General Disbrowe. Do not spend time. These gentlemen need not to vindicate themselves. We know their innocency. To make the business short, let him be committed to Newgate for a month, and afterwards for two months to Bridewell, to be whipped. You see what he is.

Sir William Strickland. I rise up to second that motion.

Mr. Bodurda. First vote the words to be scandalous. Instanced in a case of Lord Suffolk's, in *tertio Jac.*, where the Parliament resented a lower offence.

* "Oct. 3, 1656. The humble petition of William Jervis was this day read. Ordered, That a Committee be appointed to examine the matters complained of; and they are to meet in the Star Chamber."—*Journals.*

Resolved, that these words are scandalous, &c.

Colonel Mathews. Send him three months to Bridewell for all, and not to Newgate.

Major-General Goffe and *Mr. Robinson.* He tells you he is a madman. It is good physic to whip him. "A rod for the fool's back."

Sir Thomas Wroth. I am sorry you are not more sensible of this business; it reflects upon all, though spoken to particulars.

Alderman Foot. If you send him to Newgate, you will make him worse.

Colonel Fitz-James and *Mr. Berkeley.* The man is distracted already, and if you whip him you will make him worse. Let him only do hard labour; not the usual way, of whipping.

Sir Gilbert Pickering, Lord Whitlock, Sir John Reynolds, and *Colonel Hewitson.* He has been a soldier, and it is not proper to whip him; the word Noble speaks his privilege. He is a Roman, &c.

Resolved, That he be committed to Bridewell, there to receive the usual punishment, for three months.

Per Sir John Reynolds. Resolved, That immediately after Nayler's business, the Irish business be taken up, and nothing to intervene.

Mr. Bodurda desired that Noble might receive his sentence at the Bar, but Mr. Speaker said it was not usual.

The Order of the day was read.

Mr. Reynell. This blasphemy of James Nayler wounds Christ through every side, as well in assuming the worship of Christ, as his very breath. "The voice is Christ's," said he.

He ran over all the texts formerly urged in this case, pretended to great skill in the original, and would prove it, that, under the Gospel, a blasphemer and an impostor ought to be put to death. He said, Paul in the *Acts,* declared, "If I have done any thing worthy of death, let me then die."

There the apostle grants their allegation. "If I have done any thing against the law," &c.; some footsteps whereby we

may guess that the laws in the Old Testament are moral. Where the reasons are eternal, there the laws are eternal.

If a man rise up presumptuously to slay a man, he shall die the death, was offered as one argument why the magistrate may commute the punishment. It is rather to be interpreted, *and* slay, instead of *to* slay.

He cited Calvin, Rutherford, and Cotton, about the punishment of corporal fornication, and spiritual idolatry. If leave might be given, in other cases, to commute the punishment, not in this case. Otherwise, the punishment would be too light. Said something of Gallio.*

If you should punish this man with corporal punishment, in a short time it will come to nothing. If you cut off his hand, or restrain him of pen and ink, we have found, by experience, that such have found means to trouble you. He inclined to the highest punishment, but none could guess by his argument.

Mr. Waller. I have an equal abhorrency to Nayler and his party, as any man here; but I cannot agree to the punishment with death. Much has been spoken which needed not have been, and something omitted that should have been spoken. From generals you cannot conclude particulars. Your argument runs thus. Some blasphemy ought to be punished with death, but Nayler has committed blasphemy, *ergo.* Now I shall prove, that Nayler has not committed such a blasphemy as ought to be punished with death.

No positive inference can be drawn from Nayler's confession, as to his assuming the attributes of Christ, but rather a positive denial of these assumings. The proof is all along dubious.

He hath not said that he is Christ, but only a sign. Now the sign is another thing than the thing signified. He says not that Christ dwells wholly, or personally, in him.

* Probably alluding to *Acts* xviii. 17., "Gallio cared for none of these things."

As to that of the woman's kissing his feet, and the like, this is but a civil posture to our superiors.

That of assuming divine adoration. He does no such thing. He said not that Christ was in him more than he was in others.

(He said a great deal more to extenuate the crime, but I minded it not.)

Non-practice of the law takes not away the law, yet we are not now under the same dispensations. Christ did not direct his disciples to be all Nimrods, but to be "fishers of men."* Christ said, "all blasphemy shall be forgiven," &c.†

Without the spirit concurring with the light of the Scriptures, we may wander into as erroneous opinions by that light, as did the heathens by the light of nature, without the Scriptures. Do you pass this sentence upon him to reclaim himself, or to reclaim others? If to reclaim him, you cannot after death; if, before death, it will be said, it is but the terror of that which frights him. Instead of reclaiming others, you will confirm and pervert them. The ways of truth are slippery. Angels have fallen. Perfect men have fallen. This man does not challenge to be either of them. There is but an inch of ground to go upon between error on each side. I shall say nothing as to the law you have to punish this person; yet, certainly, if you condemn him by a law unknown, you do unjustly. I desire you would come to some Question.

Colonel White. There has been enough said in this business. I desire you would put some Question or other, and the most proper is, whether the Question for the higher punishment should be put or no.

Question. Whether that Question shall be put or no.

We, the *Yeas* that staid in, were 82. Alderman Foot and Sir Christopher Pack, [Tellers.]

The *Noes* that went out were 96. Colonel Berkeley and Mr. Lawrence, [Tellers.]

* *Matt.* iv. 19. † *Matt.* xii. 31.

Mr. Downing called me to go out, but consc*.

The question for the lesser punishment being read.

Colonel White proposed that his tongue might be bored through.

Colonel Barclay, that his hair might be cut off.

Major-General Haines, that his tongue might be slit or bored through, and that he might be stigmatized with the letter B.

Colonel Coker, that his hair might be cut off.

Sir Thomas Wroth. Slit his tongue, or bore it, and brand him with the letter B.

Major-General Whalley. Do not cut off his hair; that will make the people believe that the Parliament of England are of opinion that our Saviour Christ wore his hair so,† and this will make all people in love with the fashion.

Sir Gilbert Pickering. His hard labour and imprisonment will be sufficient. I have, within these two days, talked with a very sober man of that sect, who tells me Nayler is not to be heeded in what he said, for he is bewitched, really bewitched; and keeping him from company, especially from that party that bewitched him, your imprisonment will do. If your vote be not passed about his hair being cut off, I am for that.

Major-General Skippon. Seeing you are off the other question (wherein I fear we have offended God), make the other punishment as high as you can. I doubt cutting off his hair will be but too private a punishment. It is offered you, instead of pillory, to slit his tongue, and that upon a scaffold upon the Exchange, in as public a manner as can be, and that the rest of his punishment may be done at Bristol.

Major-General Disbrowe. I doubt if you slit his tongue, you may endanger his life. It will be a death of a secret nature.

* So the MS. Perhaps it designs that conscience forbad.

† As Nayler then wore it, was probably the meaning of this speaker. A learned Presbyterian had published, in 1654: "The loathsomeness of long hair, containing many arguments against it." See *Thomas Hall* in *Athen. Oxon.*

Mr. Downing. You ought to do something with that tongue that has bored through God. You ought to bore his tongue through. You punish a swearer so,* and have some whipped through an affront to your members, in the case of Noble.†

Colonel Kiffen proposed, that the boring his tongue through might be suspended till he come to Bristol.

Lord President. I am against putting this into your question. You had better take his life; that tongue may afterwards praise the Lord. I was ever against that punishment.

Colonel Holland. You have done what becomes magistrates. Now I would have you do like Christians, and not to be too severe.

Dr. Clarges. Boring through the tongue is a mutilation of members. It was said by most that were not satisfied in his death, that they would go as high as you please. Whipping, in law, is a mutilation.

Mr. Robinson. I remember no such thing granted, to go to so high a punishment; I understand not the grammar that whipping is a mutilation.

Major Audley. It is an ordinary punishment for swearing,* I have known twenty bored through the tongue.

Resolved, that his tongue be bored through.

Resolved, that he be marked with the letter B. in the forehead.

Major-General Whalley proposed, that his lips might be slitted.

Alderman Foot, that his head may be in the pillory, and that he be whipped from Westminster to the Old Exchange.

Resolved, that instead of the word "Cheapside," be added "Old Exchange."

Colonel Cromwell, that he may be whipped through the whole City from Westminster to Aldgate.

* This speaker probably alludes to some law, in consequence of the following reference. "Oct. 7, 1656, Resolved that the laws touching profane swearing, and the defects therein, be referred to the Committee for ale-houses and drunkenness." *Journals.* See *infra.*

† See *supra*, pp. 149, 150.

Major-General Goffe, that he may also be restrained from society of women, as well as from men. Only some to come to him for necessaries.

Colonel Mathews, that he may be branded and bored at the Old Exchange.

Dr. Clarges, that he may stand in the pillory in Glassenbury and Wells.

Colonel Shapcot, that his Bridewell may be at York, whence he came.

Mr. Speaker and *Sir William Strickland.* He came not thence. I shall put it upon Bristol.

Mr. Pedley and *Colonel Purefoy* proposed, that his prison might be the Isle of Scilly.*

Colonel Clarke. If you put him to hard labour, indeed Bridewell, London, is the fittest place. A gentleman in my eye will inspect it.

Mr. Bond. Do what you can, resort for monies will be had to him. Send him rather into the Orcades, or Scotland, or other remote parts.

Major-General Disbrowe and *Alderman Foot.* London is the fittest place.

Sir Gilbert Pickering. Either be strict in this, or you do nothing, for certainly this of *Quakerism* is as infectious as the plague. And that not only men, but women be kept from him. I have told you, it is a woman that has done all the mischief.

Mr. Puller proposed, that he might be sent to Jamaica.

Sir Thomas Wroth, to the Isle of Dogs.†

Sir John Reynolds. It is most dangerous to send him to Bristol, lest he disturb the peace of that town. Put it rather upon Scilly or Coventry.

Sir William Strickland. London is as liable to tumults as any place. I desire, rather, that he might be sent to Bristol.

Mr. Highland. Those that come out of the North, are the greatest pests of the nation. The diggers came thence.

* See *supra*, p 57.

† Said, probably, in ridicule of the last speaker, if not of the whole Parliamentary debate.

Mr. Robinson. I hope that gentleman does not mean by his pests, all that come thence. He means not us, I hope.* The origin of the diggers was from London, a Blackwell-hall-man thief.†

Lord Strickland. I rather think these pests have come from Surrey, for there was the first rise of the diggers.

Mr. Bampfield. I am glad every body apprehends this man to be such an one as that all are weary of him. He came from the North. It verifies the proverb *ab aquilone nil boni.* I hope it will be a warning to them never to send us such cattle amongst us.

Mr. Attorney-General. Send him to some country-town. In a public place it will breed tumult, if you keep him in a city.

Mr. ‡. I am sorry to hear such reflections upon the North. I would have this fellow sent rather to Southwark,§ where there is a prison, i. e. the Marshalsea, to which we all contribute.

Major-General Boteler and *Colonel Whetham.* The proper place is where they most abound. There they may best be punished. If at Bristol, then at Bristol.

Resolved, that London be the place.

Per Major Boteler and *Colonel Mathews.* That he might have no relief but what he earns.

Colonel Rouse. This is the most material part of your question. Many of them live better in prison than otherwise.

Mr. Bampfield. John Lilburn|| had forty shillings per week, which, I believe, is more than ever he had before. This fellow's condition will be better than before, unless you

* Mr. Robinson was one of the representatives for Yorkshire.

† At this time the great mart for clothiers.

‡ Blank in MS.

§ Of which Mr. Highland was one of the representatives.

|| Now justly celebrated for having maintained, against the judicial authorities of his time, the principle of Mr. Fox's Libel Bill, that juries were judges of law as well as fact. See *State Trials,* (1776) ii. 19—82; Dr. Towers's, *Brit. Biog.* (1770) vi. 44—69.

restrain all relief to him, more than he earns with his hard labour. You will hardly keep him so private here.

Mr. Speaker. You may remember a case in Parliament of one John James, for striking a member, one Mr. Howard, in the hall with a dagger (some thought he was killed): the House ordered his hand to be cut off, but this was to be done by Bill, and I think you must, in this case, take that course.

Dr. Clarges. I am against the troubling ourselves with a Bill in this case. I think it is altogether needless. Your judicial power will extend further than to such a vote as this, without the help of your legislative. You remember what you did this morning against Noble, in a lesser matter, and what you did not long since in a worthy gentleman's case, a member of this House, against a fellow that exhibited articles against him. I may name the person, I think he is not here, Mr. B., how you committed that fellow, and it was debated about the whipping, where a noble lord said whipping was a mutilation.

Mr. Downing and *Mr. Bampfield.* I am more afraid of a Bill than any thing else. You have done greater matters by your judicial power. Boring the tongue through is often done by less judicatures.

Colonel Shapcot and *Sir William Strickland.* An order of this House will be as much as a Bill. Your warrant to the sheriff will show your judgment; but I desire the imprisonment may be perpetual. It is a civil death.

Colonel Jones. It were good, before you agree of the time, you would proceed upon the legislative or judicial power.

Sir William Strickland. I am against a Bill. If Lord Strafford's case were to be acted over again, we should not proceed by a Bill, but in a judicial way. The Parliament then might question whether the House of Lords would consent, and so a Bill was requisite; but in this case it is otherwise. We are another Jurisdiction now, a judicial Court. If we lose this privilege, if we own it not now, we shall have much ado to resume, to regain it. I desire you would trouble yourselves no further in this business. If you talk of a Bill, it will all come to nothing.

Resolved, that James Nayler be set on the pillory, with his head in the pillory, in the New Palace Westminster, during the space of two hours, on Thursday next, and be whipped by the hangman through the streets of Westminster to the Old Exchange, London; and there, likewise, to be set upon the pillory, with his head in the pillory, for the space of two hours, between the hours of eleven and one, on Saturday next; in each of the said places, wearing a paper containing an inscription of his crimes: and that at the Old Exchange, his tongue shall be bored through with a hot iron, and that he be there also stigmatized in the forehead with the letter B.; and that he be, afterwards, sent to Bristol and conveyed into and through the said city, on a horse bare ridged, with his face back, and there also publickly whipped, the next market-day after he comes thither: and that from thence he be committed to prison in Bridewell, London, and there restrained from the society of all people, and kept to hard labour till he be released by the Parliament: and, during that time, be debarred of the use of pen, ink, and paper, and have no relief but what he earns by his daily labour.

Resolved, that the said James Nayler be brought to the bar to-morrow, at ten of the clock, to receive his judgment.

Resolved, that the Speaker be authorised to issue his warrants to the Sheriffs of London and Middlesex, the Sheriff of Bristol, and the Governor of Bridewell, London, to see his judgment put in execution respectively in the several places.

Resolved, that the Speaker be. authorised to make a warrant to the Sheriffs of London and Middlesex, to convey the said Nayler to Bristol.

Resolved, that Mr. Speaker do issue out the like warrant to the Sheriffs of Bristol to convey him up to London, after the execution of this judgment.

Resolved, that to-morrow, after the sentence pronounced against James Nayler, the several Petitions now offered, be read.

Resolved, that the House do likewise then take into consideration the persons brought up with James Nayler.

Mr. Speaker. It cost us 26*l.* to bring them up, and I hope we shall be at no more charge with them.

Resolved, That the Bill concerning Mr. Acklam be read to-morrow.

Wednesday, December 17, 1656.

Per Sir William Strickland. A Bill for Mr. Acklam to sell his lands, &c. Read the second time, and committed.

A Bill for the provision and maintenance of the Ministers of Northampton. Read the second time, and committed.

Mr. Hervey desired it might be committed to fill up the blanks.

Mr. Robinson excepts—

1. Against the words " St. Sepulchre's," &c. in the Bill.

2. Against the laying the Assessments upon land only, which, in parish taxes, was never done before.

3. To charge the landlord with half the tithes.

4. That there should be a standing treasurer. Why so? If you intend no more than the maintenance for a minister, why not by the Churchwardens, &c.?

5. Why, if distress wanting, it should be so that the persons should be imprisoned?

Alderman Foot. You put as great a charge upon the landlords that live one-hundred miles off, as you do upon the inhabitants that have the benefit of it.

Major-General Kelsey. This charge is by the desire of the inhabitants, and why should we scruple to condescend to their consent?

Major General Packer. It ought to have appeared to the House, by the Petition of the inhabitants, that it is their desire.

Mr. Hervey. I can affirm it is not only the general, but the particular desire of the inhabitants.

Mr. Bodurda. The ministers had never so large a maintenance in England as they have at this day. They have 20,000*l.* per annum of the Dean and Chapter lands, besides tithes of delinquents; so there is no need of tasking the people anew. I would have the Bill rejected.

Sir William Strickland. Notwithstanding that allowance, I know many that have not 20*l.*, not 5*l.* per annum. If there be scandalous maintenance, there must be scandalous ministers. How can we expect the lamp should burn without oil. We honour God by honouring his messengers. I desire it may be committed.

Mr. Downing. There is a general order of the House, that any member may bring in a Bill for the maintenance of ministers.

Colonel Mathews and *Mr. Bampfield.* I hope nobody will say it is a business of a dangerous consequence to settle maintenance for ministers. I wish we knew what were become of all the monies that Mr. Bodurda speaks of.

Major-General Boteler. I wish that Northampton* and Yarmouth had some of the monies he speaks of, and save this Bill.

Major-General Disbrowe, after the Committee was named, offered,

1. That it might be certainly known what the ministers should have; it remaining in the Treasury to be disposed by word, otherwise.

2. That it might be inquired how the tithe rents of delinquents are disposed of.

Sir William Strickland. Many delinquents have compounded for their tithe rents. I desire there may be an account given of them by the trustees.

Major-General Kelsey. That the trustees may account for all rents that come in to them for the augmentation of the maintenance of ministers.

Mr. Robinson and *Mr. Bond* proposed that an account might be taken of what is received by the several ministers.

* This Speaker was one of the six representatives of Northamptonshire.

Resolved, that this Bill be referred to a Committee, in the Duchy Chamber.

Resolved, that the trustees for the maintenance of ministers do bring an account of what monies are come to their hands out of the augmentation, &c.

Mr. Speaker proposed to read the Bill for Navigation.*

Resolved, that this Bill be read to-morrow.

Captain Baynes proposed that the Bill for Broad Cloths, which should have been read to-day, may be read to-morrow.

Colonel Shapcot. To the order of the day, viz. Nayler's business.

Mr. Speaker. What shall I say to him? Shall I ask him any questions? or, if he speak, what shall I answer? Shall I barely pronounce the sentence, and make no preamble to it? I can do nothing but by your directions. I pray you inform me.

Lord Chief Justice. It hath been the usual practice for a man that is committed only by vote or order of Parliament, to be discharged by *habeas corpus*, when the Parliament is dissolved, unless you proceed upon the judicial way, to judgment as a court of judicature. I only stand up to inform you.

Mr. Bond. In the case of Biddle, who was committed last Parliament,† Lord Rolle‡ would have bailed him. I wished him not. He said he was bound by his oath to do it, because it was only an order and not a judgment. I desire you would enter it as a judgment, otherwise the Lord Chief Justice must discharge him by *habeas corpus.*

Colonel Shapcot. This case is new, and it will remain as a precedent. This noble lord was not at the debate; but I think what you have done is as by a court of judicature, and it is a judgment in itself.

Major Aston. It is true what that lord says. A *habeas corpus* will release him when the Parliament is dissolved. I would have you put it to the vote, whether it shall be judgment or no.

* See *supra*, p. 82. † See *supra*, p. 57.

‡ Then Lord Chief Justice of the Upper Bench.

The Master of the Rolls. It is truly offered to you, that a *habeas corpus* lies in this case; as well offered in the case of Biddle, which was a higher blasphemy than this. I would have you add to your votes, upon the whole matter, that the Parliament doth *adjudge* this sentence, and so you tie up the hands of the inferior courts. It is a business of a very high consequence.

Lord Whitlock. I agree with what is offered to you, and the word *adjudged* must be in your entry. Otherwise, the inferior courts will, and must, release him by *habeas corpus.* You may enter it thus:—Whereas, James Nayler is guilty of such and such things; the Parliament do adjudge that he shall suffer thus and thus.

Mr. Robinson. I could willingly have gone less than the punishment, as to boring and branding, but I cannot part with any thing of the privilege of Parliament. I am sorry to hear that an inferior court should think to question any thing which Parliament does, after such a serious debate. It has been eleven days, and shall an inferior court dissolve our judgment? If I should live to sit in the next Parliament, I should make that judicature exemplary, that should offer to frustrate what we have done.

I think the judgment is good already; and I believe none will offer to alter it. That of Biddle's case was different. We heard and determined this business, we did not so in the other case.

Sir Thomas Wroth. I understand the judges are sworn to do according to the law, and if they grant not a *habeas corpus* in this case, they are perjured.

Lord Strickland. I differ from my worthy countryman. The judges are judges of your laws, and we are beholden to them for their admonition. They ought to be encouraged for this. If they desire to do their duty, we ought not to discourage them. I would have us to make no more of resolutions and votes than they are. Let us put a difference between Acts of Parliament, and votes and resolves. I hope it is not intended that every motion in Parliament should be of equal authority with a law, that nobody should speak against it.

Mr. Fowell. Some learned persons in the law should withdraw to pen the judgment, because it is to be a precedent for after ages.

Mr. Bampfield and *Colonel Chadwick* proposed to add the words adjudged, either before or after the vote.

Resolved, that these words be added to the former vote, and the Parliament hath adjudged the same accordingly.

Major-General Skippon. I would not have us conterd about words, and spend eleven days more about the business. I desire the word adjudged may be added.

Sir William Strickland. In such a solemn matter, it is very fit there should be some introduction to the sentence, which may be left to your own discretion.

Lord Claypoole, Mr. Highland, and *Major-General Goffe.* He may be first asked if he have any more to say why sentence should not pass upon him.

Major Audley. In all the courts that ever I was in, it was always allowed to the delinquent to say what he has further to say. He never yet knew that he was to answer either for life or member. In cases of manslaughter, it is allowed. And admit he should offer any thing to his recantation or retractation. I hope no body here but desires his reformation, rather than otherwise to punish him.

Lord Chief Justice. If you proceed as a Judicatory, (as it seems you have implicitly voted it,) you must ask him what he can say why judgment ought not to be passed against him. It is so in all courts of judicature. Admit him, or the devil within him should say by what authority do you pass this judgment? What can you say then? Though you have the authority of the House of Lords united to you, yet they would never proceed in a judicial way, but according to the law. I never knew them do otherwise. This is a new case before you, and it will be a precedent.

Colonel Chadwick. It is usual in all courts to ask the prisoner or delinquent what he can say why judgment ought not to be passed against him?

Major-General Kelsey. This court, nor any court but must mix mercy with judgment. It may be he may recant.

None can tell what God in this time has wrought upon him. This is a new business. He has never been yet heard what he can say to it, why judgment should not be pronounced against him. You have no law for what you do.

Major-General Boteler. If it had been in the case of death, I confess I should have given him all the liberty that might be to speak for himself. But in the lesser punishment, you need not put an excuse in his mouth.

Lord Strickland. We shall be stricter than the Papists, who desire us but to renounce and we shall be pardoned. I would have us incline to mercy.

Lord Whitlock. The clerk, upon the prisoner's coming to the bar, should read the judgment, and then you ask him what he has to say for himself, &c. If he say any thing, he may withdraw, and then debate it. I remember it usual, where life is concerned in the sentence, to ask the party what he has to say, but not in lesser cases.

Mr. Nathaniel Bacon. You should consider how it stands with the honour of God, or of this House, to retract your judgment, though this man should say he repents. Have you not passed your judgment already? Remember how you sent a man yesterday to Bridewell, and never called him in to ask him what he would say.

Mr. Bodurda. I shall second that motion that he may be asked what he has to say. I have known that practice in all courts, not only in capital, but criminal cases.

Major-General Skippon. Either your judgment is good or it is bad. If bad, why do you not recal it? I think it is good, and it had been better if it had been higher. But I hope you will not release all the corporal punishment upon his saying he repents. You will put an excuse in his mouth. Leave it to him to say what he pleases.

Colonel Hewitson. I desire it may be asked him what he has to say. This has been seconded and thirded.

Mr. Bampfield. Sixty have spoken in this business already; and by that time sixty more have spoke, you will spend time enough in it. I wonder to see such inclination to spare this

person, as though his crime were so small that it may wholly go unpunished, if he say but he recants. If you bring him in and he should show obstinacy, which he may do as soon as recantation, then surely the same reason and equity will lie for those that move to aggravate his punishment upon the obstinacy, as others will move to extenuate upon recantation.

Mr. Downing. You have intricated yourselves into another debate. I desire you to put the question, whether the question offered should be put or no.

Mr. Bond and *Sir Thomas Wroth.* He ought to be asked what he has to say. I am of that lord's opinion, of the long robe, that he must be heard what he will say.

Colonel Shapcot stood up to speak, but was cried down, and a great debate whether he should speak or no, and was going to the question till Mr. Goodwin took it up.

Mr. Speaker said it was not proper for a man to press to speak (after another had stood up and said he had spoke) till the Speaker call him up; and it was also a great breach of privilege to call any man up to speak, unless he shall first stand up of himself to speak.

Mr. Goodwin. It is very unparliamentary to ask the prisoner any question. It may be, he will deny your judicature, or that you have a law, and where is your judgment then. But this will but draw a further trouble upon you. Your judgment is passed already. You are only, now, to pronounce the judgment. If I could be satisfied that he would recant, I should willingly admit him to speak all he can.

Colonel Holland. To ask him questions is very parliamentary and usual in such cases, in lesser offences than this, as in Sir John Stowell's case,* and many other cases.

Major Aston. If once you admit him to speak, you must hear him all that ever he will say, and so hold you *de die in diem.* Have you not heard him already? Do not the sessions of the peace pass their sentence upon indictments with-

* "Oct. 12, 1648. An order for trial of Sir John Stowell." *Whitlock.* See also the *Index* to *Journals.*

out hearing the party speak? Did you not so in Mr. Burton's case?* I may name him; he is not here. I am not for hearing him any more.

Major-General Packer. I hope you will give this person the liberty of an Englishman to speak for himself. Haply he will not trouble you with much. I doubt he will not recant; but I would not have you shut out repentance. Hear what he will say, and then you justify yourselves both from what he shall say against your judgment, or what others shall say that you make more haste than good speed. It will be more pleasing to God, and justifiable before men.

Judge-Advocate Whalley stood up to speak to the orders of the House, and then fell into the merit of the business, but Mr. Downing took him down; yet, Major-General Whalley moved him up again.

Judge-Advocate Whalley. I hope, if this person should come and recant, you would accept it, more than all your judgments upon him; and it will answer more your ends. His reformation, I suppose, is the end of punishment. If you be satisfied in that, you need not sentence him. I desire he may be heard.

The question put, whether the question for asking him any question or no should be put, and the House divided upon it.

We that were for the question, the *yeas*, were 85. Sir Charles Wolseley and Colonel Philip Jones [Tellers.]

They that were against and went out, the *noes*, were 107. Colonel Throckmorton and Colonel Fitz James [Tellers.]

Resolved, That this question shall be put.

James Nayler called to the bar.

Mr. Speaker. Now ten or eleven days have been spent in the debating your crimes, which are heinous. You have troubled the countries up and down, and now you have

* Thomas Burton, Esq. was a justice of peace, and one of the representatives for Westmoreland. In this Parliament a charge of disaffection to the Government was exhibited against him, but he was declared innocent, and his accuser was imprisoned. See *Journals*, (Oct. 16, 18, 1656,) pp. 439, 440.

troubled the Parliament. Yet, in your sentence, mercy is mixed with judgment. It is a sentence, not of death. They desire your reformation rather than destruction.

Nayler offered two or three times to speak, and to say he desired to know what his crimes were. He knew none. But the Speaker proceeded to pronounce the sentence,* and Nayler said, as he went out—God has given me a body; I shall willingly endure it; or, I hope I shall endure it; or, that God will, I hope, give me a spirit to endure it. I did not well hear: and said further, The Lord lay not these things to your charge. I shall pray heartily that he may not; or, I shall pray for you.

Sir John Reynolds and others said afterwards, it was hard he should not be heard out, and he doubted some were afraid that he should recant.† He doubted that was not so charitable.

Mr. Bond and *Mr. Bampfield.* Rid your hands of them all, for they lie at your charge, and send the women into their own counties to be kept to work; and let the petition against the Quakers be read, and the whole business over.

Resolved, that the petitions be read, and the rest of the prisoners dispatched to-morrow morning, and nothing to intervene.

Resolved, that the business of Ireland be taken up on Friday.

Few Committees sat this afternoon. I was only at a private Committee in the Speaker's chamber, where Mr. Bedford had the chair. It was to enable one Mr. Stedry, and his two daughters, Elizabeth and Judith, to let leases of lands, for twenty-one years, at a rack.

* See *supra*, p. 158; *State Tryels*, ii. 272.

† Yet, according to *Whitlock*, "it was thought by many, that he was too fiercely prosecuted by some rigid men." To encourage such a spirit, was probably the design of the following pamphlet, preserved in the *Harleian Miscellany*; "The Grand Impostor examined: or, the Life, Trial, and Examination of *James Nayler*, the seduced and seducing Quaker; with the manner of his riding into Bristol. London, 4to. 1656."

Thursday, December 18, 1656.

It was past ten before I came into the House. I hear this was done.

A Bill for the holding the Sheriff's Court for the County of Wilts, in the Borough of Devizes, was read the first time.

Captain Lister called me aside, and told me a long story in very high terms against Captain Atkinson, and that one of them should fall. He would complain to O. P.* and he said Richard Hilton has confessed all before Major-General How; and would not go back from what he had said.

Sir William Roberts and *Sir Thomas Wroth*. Explain your order, whether Nayler shall be whipped this day or on Saturday. The order read.

Major-General Whalley. If he is set in the pillory, immediately after his whipping, it will go near to kill him.

Resolved, that the whipping of James Nayler, from Westminster to the Old Exchange, is to be on this day.†

Per Major Burton. An additional Act for encouragement of trade and navigation, was read the second time.

Mr. Bond, Mr. Robinson, and *Mr. Lloyd* proposed, that this Bill might be committed to the Committee of Trade. They took some exceptions to it.

Resolved, that this Bill be committed to the Committee of Trade.

Mr. Bampfield delivered the petition from the west, which was read, and it was said to be signed by many thousands, but no hands to it.

Mr. Robinson excepted against it, because no hands to it.

Major-General Howard. There is another petition from the north, signed by three ministers at the door ready to attest it, viz. Northumberland, Durham, and Newcastle.

Per Mr. Marbury. Another from Cheshire, read.

Per Mr. Aldworth. Another from Bristol.

* Oliver, Protector.

† "*James Nayler* stood in the pillory in the Palace Yard two hours, and then was whipped to the Old Exchange, from whence he was conveyed to Newgate, in order to the execution of the rest of the sentence passed upon him." *Mercurius Politicus*, (Dec. 18.) No. 34, p. 7460.

Per Colonel Rouse, from Cornwall. No hands to it, but he did affirm the petition. Another for Exon and Devon.

Alderman Tigh. I have received a letter from Dublin, desiring me to represent unto you the growing of the Quakers there.

Colonel Coker said he had a letter to the same purpose from Dorset.

Mr. Westlake had another letter from Exeter.

Alderman Foot proposed that all these petitions might be referred to the same Committee, for they increase in other places, and ought to be taken a speedy course with.

Lord Chief-Justice Glynn. It is high time to take a course with them. They daily disturb our courts of justice; several indictments against them; their persons and pamphlets daily pestering of us. I was, in my private opinion, against punishing old offences with a new punishment, and am also for tender consciences. But those that openly profess against the ministers and ordinances and magistracy too, it is fit they should be taken a course withal; for they grow to a great number. There was a Bill in last Parliament against them; I desire that may be confided, with all those petitions, to a Committee, to provide a law against them.

Sir William Strickland. I am sorry to see such a thin House upon this occasion. They are a growing evil, and the greatest that ever was. Their way is a plausible way; all levellers against magistracy and propriety [*property.*] They say the Scriptures are but ink and paper. They are guided by a higher light. They deny all ordinances, as marriage, &c.

Sir Thomas Wroth. They are a very numerous party, and ought to be taken a course withal speedily. I desire you would refer it to the same Committee, that your time may not be further spent in this business.

Mr. Fowell. It is high time to take a course with them. They deny all ministry and magistracy to be the word of God, &c.; affront all authority, and increase daily.

Mr. Bedford. I had a report in my hand last Parliament, and stood up to report it; these are the heads of it, that it is high time to take a course with them.

Major-General Whalley. It is a hard thing to make a law against them. Some do acknowledge scripture, magistracy, and ministry; others, not. Good ministers is the only remedy to suppress them: only make a law against blasphemy, and let them that commit James Nayler's fault, have his punishment. But for their denying of the magistracy and ministry, you have laws against them already. Bind them to their good behaviour.

Lord Whitlock. If there be any such people as deny magistracy and ministry, we may easily guess the consequence. Cutting of throats must necessarily follow. That which I do most except against, is the disturbance of the public peace of the nation. I am much against the general words Blasphemy and Quakerism. This is like the word, incumbrance, the more general, the more dangerous for the people of England. I would have it referred to a Committee to bring in, by a particular law, what persons shall be punished, but not to leave it in the general.

Major-General Skippon. We are all full of the sense of the evils spread all the land over, and our indulgency to them may make God to cause them to become disturbers of our peace.

I am for tender consciences, as much as any man; but it is one thing to hold an opinion, another thing to hold forth an opinion. If a man be a Turk or a Jew, I care not so he do not openly hold it forth.

I am for enumeration of their blasphemies, for I would not have any honest man surprized by a general law. I would have Biddle,* and his sect, also considered by the same Committee, which are also dangerous, as well as Quakers.

Mr. Briscoe. I have no petition from the county † for which I serve, but I am sure I have as much occasion to complain as any, for they are numerous in those parts, and, principally, occasioned by the ignorance of these people in the principles of religion. They meet in multitudes, and upon moors, *in terrorem populi.* I have a long time feared,

* See *supra*, p. 57. † Cumberland.

that they and the people of a contrary judgment, should fall by the ears together. I desire it may be referred to the Committee.

Mr. Puller proposed, that the ordinances against blasphemy might be inspected by the same Committee, and that a law might be brought in against blasphemy.

Major-General Boteler. They are most their friends that labour to suppress and prevent that wickedness. I hope we shall never have cause for the like debate; which would be prevented if there were a law now made. It is one thing to pass a sentence upon a man without a law, another thing to make a law. I desire a Bill may be brought in.

Mr. Godfrey. Unless you provide a law against them, in general, it was to little purpose to punish this man. The sect is dangerous, the increase numerous, prevention very necessary. I desire it may be referred to the same Committee to bring in a Bill against them.

Major Brooke. I desire you would spend some time in making a law against these, else all the laws you make here will be to no purpose. They will overturn all laws and Government, unless you timeously strengthen the banks. They meet in thousands in our country, and certainly will overrun all, both ministers and magistrates. I desire that you would make no delay in this business. Ere long, it will be too late to make a law.

Sir Christopher Pack. Though you have no petition from London, yet we are no less infested with them then other parts of the nation. They knew you were about making a law against them, but I desire that it may be referred to a Committee, and it will appear our grievances are as great as any.

Mr. Butler. In pity to these people's souls, I desire there may be a law against them. Lenity may work upon some, and severity upon others. They have been reclaimed from disturbing of ministry, and haply, by fair means, other works may be done.

Mr. Robinson. I am against referring it to a Committee to bring in a law against them, under the name of Quakers.

Some may be called Quakers that are not so. It is an offence, indeed, to keep on their hats before the magistrate; for, lay aside magistracy, and expect confusion. I would have the petition considered by the same Committee, and see how far the offences extend to the disturbance of the peace.

It is the magistrate's interest to have an influence upon all factions, and not drive the Government into one faction, whilst they hold nothing out to the disturbance of the peace. Under the general notion, you may bring all, nay any man, to be tried by this law. As to the superintendency of the Church, if the supreme magistrate should assert Arianism, he must be tried by this law. I would first have the petitions considered, and the substance and heads reported, and then a Bill to be brought in.

Major-General Kelsey seconded that motion; and that, under the general word Quakers, it might not be referred to a Committee to provide a law, but first to report the heads and substance of the petitions, and their opinions in it.

Captain Baynes. I have not heard so many petitions read together, and not committed in order. I am against referring it to a Committee in general terms. But let it be enumerated in the Bill, the offences particularly, that a man may certainly know how he transgresses the law, and when he is free.

Colonel Sydenham. I am as much against the Quakers as any man, but would not bring in a law against Quakers by a general word. It is a word that signifies nothing, *individuum vagum* nearly. It is like the word Lollards or Puritans, under the notion whereof, many godly persons are now under the altar, their blood being poured out. It is of dangerous consequence to make a law under general terms, and leave it to after ages to interpret your meaning. Let it be plainly explained what the offences shall be. But your proper way now, is to refer the petitions to a Committee, who may take out the heads of them, and represent their sense to you, and then you may make a law as you see occasion.

Mr. Bond. If men boggle at the word Quaker, leave it out. If we had had a law against them, we should not have

troubled ourselves with this fellow. They are a generation that begin to lisp already. It will make men wear their swords. I desire the Question may be put.

Lord Strickland. You will not find in all your statute-books a definition of Quaker or Blasphemy. Other States never do it, further than as disturbers of the peace. We know how laws against Papists were turned upon the honestest men. We may all, in after ages, be called Quakers. It is a word nobody understands. I would have it left to your Committee to consider of the heads of the petitions, and represent them to you, and then you may make a law against them. But we all know how the edge of former laws against Papists has been turned upon the best Protestants, the truest professors of religion, the honest Puritan, as they called him, a good profession, but hard to be understood, as this word Quaker will be in after ages.

Resolved, that the petitions be referred to Nayler's Committee, who are to consider of the same, and report the heads to the House, fittest for a Bill, and to suppresss the mischief.

A great debate whether it should be referred to Nayler's Committee, or to a new Committee. Mr. Robinson offered to name a Committee before the Speaker had said, "Gentlemen, name your Committee;" but Mr. Speaker said it was improper.

Resolved, at last, that it be referred to Nayler's Committee.

Mr. Bampfield and *Mr. Bond.* Make an order to send the three women and the man to the House of Correction for three months, and rid your hands of them. They lie at your charge.

Lord Strickland knew Dorcas Erbury to be an honest minister's daughter in Wales. He would not have them sent to the House of Correction till their crime be examined.

Mr. Godfrey. It is neither just nor honourable for a Parliament to condemn one for his own confession, in giving testimony against another. You ought not to build any judgment or sentence upon what they confessed there; but now examine, as against them.

Mr. Robinson. That way of proceeding against a witness was never known but in Lord ——— * case, where his footman bore witness against him, by which testimony he died for the crime, and afterwards they hanged up the footman for what he had confessed against himself.

Colonel Sydenham. I cannot but wonder to see the strange temper of the House in this business; how zealous they were for that high sentence against Nayler, though there was no law at all for it, and never quiet till it was done; and now, how different. A punishment far lesser would content them against these women; who, in my opinion, were greater offenders than Nayler, inasmuch as they actually committed idolatry. He denied all honour to himself. For my part, I am altogether unsatisfied by what law you do this. I doubt you have opened a gap to prostitute both life, member, and liberty, to the arbitrary power of men, who by a vote may do what they will.

Divers others spoke to this purpose, to prevent present doom.

Resolved, that the examination of the crimes of these women be referred to the same Committee to propound the punishment.

Lord Fleetwood. You have voted a war with Spain long since, and have made no provision for monies to carry it on. I desire a day may be appointed to consider of that business with all speed.

Some said Tuesday next, others a longer day; but, at last, it was

Resolved, that the House in a grand Committe do debate that business to-morrow morning.

Lord Strickland reported two letters from the King of France, for the naturalization of Monsieur de Sebrand's child, four years old.

Resolved, that it be referred to the Committee for Naturalization.

We dined with the Clothworkers at the Leg.

At the Committee of Trade, in the Duchy Chamber, we

* Blank in MS. This Speaker probably referred to the trial of Lord Audley, *State Trials*, (1776,) i. 387-389.

sate till after eight, upon the business of the Clothworkers against the Merchant Adventurers, touching the exportation of white cloths, undressed.* Mr. Rich, of counsel, for the Clothworkers, and one Skinner, a notable nimble fellow, I suppose, clerk to the Merchant Adventurers. There was at the Committee, Mr. Downing, Sir Christopher Pack, Alderman Foot and Mr. Rolle, his son-in-law, Mr. Moody, Mr. Disbrowe, Captain Hatsell, Mr. Lloyd, Mr. Thomas, Mr. Collins, Major Burton, Mr. Tymbes, Mr. West, and myself, but we came to no resolution, so adjourned the debate till Tuesday next.

See the case at large upon my file of letters.

After dinner I was a while at the Leg, with Major-General Howard, Mr. Briscoe, Mr. Fenwick, Captain Lilburn, Lord Eure, and other Scotchmen, about the Borders Bill, and we perfected it almost.

Friday, December 19, 1656.

Major-General Whalley brought in a Bill concerning the dividing of Commons, &c. Read the first time.

The Master of the Rolls was for rejecting of it, for he never liked any Bill that touched upon property.

It can never be made a good Bill what in itself had a tendency to any inconvenience; this the putting of the power of determining of property in three persons. Time was when I durst hardly have trusted the justice of peace with determining of a cow grass. You have good justices now: who can tell what may be hereafter?

Major-General Whalley. I shall rather be loser than gainer by this Bill, for I have no commons; all mine are inclosed. It is for the general good, to prevent depopulation and discourage to the plough, which is the very support of the commonwealth. It is not to put it in three commissioners' power, but in a jury also.

* See *supra*, p. 115, 116.

Mr. Fowell. This is the most mischievous Bill that ever was offered to this House. It will wholly depopulate many, and destroy property.

Resolved, that this Bill be not read the second time.

Resolved, that this Bill be rejected.

Mr. Speaker. The aldermen of London are waiting here with a petition. I desire they may be called in.

The Aldermen, to the number of ten, were called in; and, at the bar, one of them [*Fowke*] made a short speech before they presented the petition.

Mr. Speaker. This city is an antient, honourable, and famous city; it is called *camera regis*,* &c.

The citizens being the life of this commonwealth, and so exempted from going out to wars, yet many of them have ventured their lives and fortunes for this commonwealth in the late wars. Privilege and duty, the Lord Chief-Justice of heaven hath married together. Some have neglected that duty; yet during the privilege get great estates by their freedom, yet never respect to bear any of the duty or offices in the city.

Presented a Petition from the Lord Mayor, Aldermen, and commons, and Common Council of the city of London.

The clerk fetched the Petition at the bar; and the Aldermen, to the number of ten, with officers, withdrew.

The Petition read. It was to debar all from being eligible to be free men there that do not contribute with their pains and persons, and purses, to the burthen of the justice of that magistracy, to support it.

Mr. Recorder. There is no fail of justice in that great city yet; but unless the contents of the Petition be considered, magistracy will fall to the ground.

He made a long speech to the purpose of the petition, that the non-residents might be liable to duty as well as the inhabitants. They have the best houses and most convenient for trade, and have got great estates in the city, each of them.

Aldermen Foot and *Pack* spoke to the same purpose as to the necessity of the committing of it, and that a Bill might be

* Thus *Selden,* "Londinum camera regis Angliæ."—*Mare clausum,* (1636.) b. ii. ch. 22.

brought in to this purpose; for else, in time, none shall support the duty of the city, but such as are mere mechanics.

Mr. Bond. This is a most mischievous petition to the gentry of England, that ever was. I thought that, long ere this, we should have the trade dispersed all the nation over; and this city, it seems, must have all the trade. If you let this pass, you pull up by the roots all the privileges of the people of England, and put them into the power of a few men of this city. They durst not have ventured to have brought in such a petition in any age. They surely have privilege enough. Shall this fall upon the gentlemen of the nation that have bound their younger sons apprentices, and, the elder brothers dying, they come to the estate. These never had a penny profit by the city, yet they must fine seven or eight hundred pounds for Sheriff, Alderman, and the like; it is not to know what vast sums have been raised that way. When they got a stranger amongst them, they squeezed them to the purpose. I paid, myself, four pounds a week, while I lived in the city, to the Earl of Essex's assessment. My estate was all sequestered, and I was not able to bear it; so left the city. This is the complaint of a many. I desire that this petition may be rejected.

Mr. Lloyd. This gentleman is angry. All the intent of the petition is to bring an equality of burthen, as well as profit, *qui sentit commodum sentire debet et onus.* The city has served you faithfully; nay, more than any city in England. You owe them now 300,000*l.* They pay a fifteenth part of the assessment. You may have occasion to use them afterwards. I desire it may be committed.

Mr. Bodurda. This gentleman hath dealt more ingenuously than the petition. They would have strangers bear the burthen. They tell you how they have suffered, and they likewise imply how they will make up their losses by these fines. They choose sheriffs by design. They will pick you out thirty or forty that they know will fine for sheriff, rather than stand. They choose but two out of them all, and if the two first stand, their design is broken for that year. Instanced in one gentleman that was chosen sheriff. He told

them ingenuously he would do the duty of a sheriff to the full, but would not spend all the estate he had got in many years, in one year. He told them plainly he would go in his cloak, and in the same clothes. He would be at no charge. Whereupon the Council rejected him, and he paid not a penny fine. Otherwise their design had been spoiled. I would have this rejected.

Sir Christopher Pack, for information sake, supported the motion.

Sir Thomas Wroth spoke again. That gentleman is mistaken, I do aver there is no such design in the choosing sheriffs. That person he speaks of was a man much wedded to his own opinions, and therefore rejected.

Major-General Kelsey. I am a free-man myself. I know that gentleman that was chosen sheriff. He was no such base-minded man as is represented. He is now chosen sheriff for a county. I desire the petition may be committed. That of the factors is no danger at all. I am not afraid to be sheriff.

Captain Baynes. It may be committed and all these inconveniences considered; as that of factor's and gentlemen's sons too.

Mr. Highland. This city has lost nothing by the Parliament. What by offices, and what otherwise, they have been no losers. I am for the rejecting of the petition. It is true what is said. They do choose sheriffs out of design, and go a birding for sheriffs every year.

Colonel Hewitson. The city has done you eminent service, never to be forgotten. This is the first petition that they ever troubled you with; it is no great matter. It is only to restore them to their ancient privileges and their order and government. I would have you give them thanks for their good service.

Colonel Whetham. I am sorry to see so great a reflection upon this honourable city; especially by those that are by the skirts of it,* and have got good profit. I desire it may be committed.

Mr. Noel. I have lost 20,000*l.* since I have had the honour to be a free-man of London, and yet I never lost by

* Mr. Highland was M. P. for Southwark.

being a free-man. I have a competency left yet, and I hope shall never lose by the relation. The desires of the petition are just and good. I desire it may be committed.

Mr. Robinson. There are some things in the petition which may be made good by commitment, except against the words "such as trade or such as have traded."

Mr. Bampfield. I am sorry that this City has no greater boon to desire of you. I desire the petition may be committed with this exception, that aliens shall not be liable.

Resolved, that this petition be referred to a Committee, to meet to-morrow afternoon in the Inner Court of Wards.

Mr. Bodurda. I move that Mr. Bond may be added to this Committee. I am informed that, in the case of a petition, though one speak against it, they may be of that Committee, but otherwise, in a Bill.

The Master of the Rolls. It was an ancient ceremony to call in the Aldermen of London to the bar, to acquaint them what was done in their petition. It is but seldom that they trouble you, and it is but a compliment. I desire they may be called in. They have been a faithful city to you, and have raised 40,000 men in twelve hours' warning, &c. and done you many considerable services. I well remember it.

The Aldermen were called in, and Mr. Speaker told them how the House had considered of their petition, and referred it to a Committee to prepare an expedient for what they desired therein.

To the business of the day.

Captain Baynes reported from the Committee, the arrears of the assessments from the City of London.

February 1, 1644, to June 24, 1656	30751*l.* 1*s.* 0*d.*
Whereof discharged by the Act of Oblivion	6600*l.* 0*s.* 0*d.*
Due by Offices and Officers employed by the State	2600*l.* 0*s.* 0*d.*
From the Stillyard and Intercourse Merchants	6823*l.* 15*s.* 5*d.*
Owing by the Temple and Inhabitants thereof	2325*l.* 0*s.* 0*d.*

Both which ought forthwith to be levied by distress.

Alderman Foot. The burthen ought not to lie upon the intercourse merchants.

Lord Whitlock spoke to the same purpose, that the stillyard merchants should pay it.

Mr. Lloyd proposed that the stillyard might pay these assessments, and not the merchants of the intercourse. They are not intercourse merchants.

Lord Strickland. The English merchants have now got the trade of the stillyard. They are but five or six that the burthen lies upon. They are not able to pay it. The agent from Hambrough did clear it when he was here; and now he has put in another paper to clear the stillyard merchants from that tax. We are freed in Holland both from custom and excise, upon the very account of the stillyard merchants trading here. I would have my Lord Protector consulted in it, lest grasping for a little monies we break our public faith with foreign states. Let us do nothing till well informed.

Major-General Disbrowe. You need not hire foreigners to live amongst you. They will give you monies to trade here. I hope you will not use strangers better, seeing you use them no worse than you do your own inhabitants. This has been before the council, and both there and in the little Parliament, it was resolved they ought to pay this assessment.

Captain Baynes It was resolved last Parliament, that the stillyard merchants ought to pay this part of the assessment; either they must pay it, or the city. It is good you would declare your opinion of it, for the city till then will lay the assessment there still, and in the mean time the commonwealth wants it. I desire the Committee may be agreed with.

Sir Christopher Pack. This is a great business, and was never yet fully determined. I desire that you would either order the merchants of the intercourse to pay it, otherwise take so much of the city. In former times their subsidies were allowed in the Exchequer, upon defalcations.

Sir William Strickland. Suspend your vote till you have well advised in it, lest you draw more enemies upon you. It seems these were dispounded by privy seals in the Ex-

chequer. Upon the accounts of subsidies this gentleman leaves it very intricately.

Mr. Downing. This is no damage to Holland, they have renounced that trade long since. Subsidies were a free grant to the king, and he might give them back again by privy seals if he pleased, but we must have, *pecuniis numeratis*, our charge carried on.

The intercourse merchants are many of them traders into the Spanish countries, which are your enemies, and with other countries. It is by contract and agreement, and not at all relating to Holland. Again, Holland has engrossed and put great inconveniences upon our manufactures. They get 30,000*l.* per annum by our laces; a new trick of the Hollanders. They are far too politic for us in point of trade, and do eat us out in our manufactures. I desire they may pay as well as we.

Mr. Noel. It were good it should be determined whether the city or the merchants of the intercourse should pay it; for it has been an old dispute and never decided.

Sir William Strickland proposed that the word "stillyard" might be left out of the question, and let it stand only, "upon the intercourse merchants."

Lord Strickland. Either leave out both words, or neither word.

Captain Baynes. If you take out the word "stillyard," you lay it upon the intercourse merchants; unless you divide them, that each may know his proportion and what to pay.

Colonel Mathews. The proportions of the stillyard are but a small part to that of the intercourse. I desire they may be distinguished, and divide your question.

Alderman Foot. We make no distinction of Hambrough or stillyard merchants, but upon the merchants of the intercourse.

Dr. Clarges. We need not keep up our league with Spain, whether they will or no. This will make no breach between Holland or Hambrough and us.

Major-General Kelsey. I am for dividing of this question,

that, as well the intercourse merchants and the still-yard merchants may know what they shall pay. I should be sorry it should breed a difference between us and foreign states, for so small a matter, or upon any account where it can be otherwise remedied.

Resolved, To agree with the Committee in this part of the Report, That the sum of 6823*l.* 15*s.* 5*d.*, arrear of assessment upon the Merchants of the Intercourse and Still-yard be levied by distress, &c.

Resolved, To adjourn this debate till to-morrow; nothing to intervene.

This afternoon the Grand Committee for Religion sate, but I was not there. I dined with Captain Baynes, and stayed three hours with Sir Thomas Sandford, who came home on Saturday last, and I knew not.

Saturday, December 20, 1656.

A Petition presented on the behalf of James Nayler, to suspend his punishment for some days, he being sick; signed by one White Zachery and two more, who disclaim the crime.

Mr. Godfrey. I would have the truth of the petition examined, before you alter your judgment.

Lord Lambert had spoken with some of the petitioners, and they did affirm that Nayler was sick and unfit to undergo his punishment. He desires physicians may be sent to him.

Mr. Robinson. Give him a week's time, and spend no more of your time. You need not send physicians. Haply, deferring it for a week's time may work much good upon him, as it did in the case of Sir John Owen,* who, by his reprieve, was wrought to very much good.

Mr. Nathaniel Bacon. Suspend the residue of his punishment till Saturday next, and, in the meantime, send phy-

* In 1649. See *Ludlow; Parl. Hist.* xix. 56.

sicians to him, who on Friday may report to you the fitness of his body to undergo the remainder of his punishment. I know most of the honest men that petition.

Mr. Downing. I would have been glad to have seen a Petition from James Nayler's own hand. I desire his further punishment may be suspended, till this day se'nnight, and that, in the interim some godly divines, as Mr. Caryl and Mr. Nye, may be sent to him, to save his soul if it be possible. The Ecclesiastical Courts were very tender in such cases.

Sir William Strickland seconded that motion, and desired that Mr. Caryl, and some such godly minister, might be sent to him, to work good upon him, if it be possible.

Lord Broghill. Make haste with your vote, lest, while you are debating about suspending it, the punishment be executed.

Major-General Kelsey stood up to the same purpose.

Mr. Robinson. Put the suspension of the punishment in the negative, lest we be surprised that were of another judgment, not to have so great a punishment.

Major-General Disbrowe. It was the act of the House, and nobody ought now to talk of what their judgment was.

Lord Lambert proposed, that physicians for the body as well as the soul might be sent to him.

Major-General Disbrowe and *Major-General Goffe*, to send ministers to him.

Mr. Margetts. That the same punishment which was to be done this day, may be suspended till Saturday next.

Colonel Jones. That the word "reprieve," might be in your vote, lest the punishment be done both days.

Resolved, That the further punishment which should have been done this day, shall be suspended till Saturday next, and that the Sheriff of London and Middlesex take notice to see this executed accordingly.

Resolved, That Mr. Caryl, Mr. Nye, Mr. Manton, and Dr. Reynolds, and Mr. Griffith, be sent to confer with him, or any of the five.

Resolved, That Dr. Bates and Dr. Wright be sent also to him. It was offered for Dr. Clarges, but not thought convenient.

Lord Lambert. I am informed that nobody is suffered to come at him. I inform you as to matter-of-fact.

Mr. Speaker. I must put you in mind of Lord Cobham's business, which you appointed this day to hear counsel of both sides in.

Some desired that the Bill ingrossed, might not be read till the counsel came in. But it seems no Bill can be read in the presence of a stranger.

An Act to enable Sir John Cobham, alias Brooke, to levy a fine upon his lands.

The parties and counsel called into the bar, and Mr. Speaker directed the counsel that were against the Bill, to speak first.

The difference was between Sir John Brooke and some children, tenants in the remainder in tail, two gentlewomen.

Counsel *pro* petitioners, viz. Sir Peter Ball, Mr. Churchill, and Mr. Turner, alleged, that this House was misinformed by Lord Cobham, for albeit one of the children had joined in the petition, she was heir general.

They produced an Act of Parliament, *tertio Jac.* exemplied under seal, and offered it to a clerk to read it, but Mr. Speaker directed the counsel to read it himself. He read the proviso, whereby the remainder was limited by the will of Sir William Cobham. We grant Sir John Brooke to be tenant in tail, but now he is ninety years old, and no possibility of issue. Sir William Cobham died in your service, and left daughters, whereof Colonel Tomlinson married one. He is now in Ireland, and has no notice of this Act, and so will lose his portion.

Mr. Churchill. Though Sir John Cobham, in strictness of law, is tenant in tail, yet he is limited by no act of his to discontinue the first settlement. If this aged gentleman should die, we are next heirs by the Act of Parliament to Sir William Cobham.

Counsel Mr. Finch and two more, *pro* defendant in the Petition. We shall make it out that, if Lord Cobham were dead, this estate should not descend upon the petitioners:—

George Lord Cobham made his will in Queen Mary's time. He had eight sons and two daughters.

To William, the eldest son, and the remainder to his heirs-male, to the tenth. The like limitation to every son to the tenth son. William had issue, Henry and George Lord Cobham, and other daughters. Henry was attainted of treason in *primo Jac.* but not executed. George was attainted and executed the same time; whereby the king became intituled to the estates of Henry and George, and their heirs both in possession and remainder. George had issue Sir William, who had four daughters. The king, thus seized, grants to Duke Brook and his heirs, for so long as George or Henry should have any issue of their bodies. Duke dies without issue; Henry, the first attainted, surviving, whereby they can never make a pedigree as heir male. The entail is not yet spent, though Lord Cobham die without issue, for there are heirs male of Thomas, the second son yet living. Besides, William's daughters have heirs yet living. Sir Jerningham married one of them, who has heirs male living. Thus we are now upon the account of equity before you.

Mr. * of the same side. Either they must pretend from Duke or Charles.

Mr. Churchill and Sir Peter Ball. Till they make out the suggestions of the petition, they ought not to have their Bill pass. They ought to make their title, and that it be clear and that we have no prejudice by it. But, whether we have the wrong, or some other, the wrong is to some, and this is all one to this House in point of justice, so there be wrong done.

Mr. Finch. Though they had a title, yet, as we are here before you, we shall make it out.

If there had been no attainder at all, this Lord Cobham had been tenant in tail by the common law, but being fettered by the act, he desires to be released.

* Blank in MS.

It is for payment of his debts, which Parliaments have usually favoured. It agrees with natural justice that a man's estates should pay his debts. They are not vainly contracted. It was by the alum work and salt-petre, for the public good. He laid out 10,000*l.* to bring the alum works to perfection, for which the Exchequer thought fit to give him 800*l.* per annum, but there is owing him 11,000*l.* for that. He desires but 300*l.*, and let them take all the lands and pay his debts. These daughters that petition, have been no losers by this estate, and now they come and reward Sir John Cobham well, by obstructing this Act. He desires but the common right which a tenant in tail ought to have, if he were not restrained by an Act of Parliament, whereby he has no benefit at all. That Act was made to preserve it in the name, which now is impossible. We desire no more but what Englishmen ought to have.

Sir Peter Ball. A Parliament never took away a third person's right without his consent. They have proved neither of the allegations in their petition. Though we had no right, yet if any others have right, you will not, I hope, conclude them without hearing.

Mr. Speaker pressed them two or three times to spare time which, with us, was precious, and to offer nothing but new matter. Where one affirms, and another denies, we cannot ground any judgment.

The Counsel were, of each side, three; the ladies and all parties, to the number of twenty, withdrew.

Mr. Speaker. What will you do upon this debate.

Major-General Kelsey. I understand not the law, but matter of fact, thus: Lord Cobham has contracted his debts in the king's service. Sir William Brooke died in your service, and these are his daughters that petition. It appears not to me that they have the right, but it seems others have right whom we have not yet heard. I desire this Bill may be rejected.

Alderman Foot and *Major-General Boteler.* It is confessed by Lord Cobham's counsel, that, though Sir William Brooke's issue have no right, yet there are others that have right, viz.

Jerningam's daughter, or the heirs of Thomas, &c.: this is the strangest argument. I desire the Bill may be rejected.

Mr. Bampfield. This may be helped with a salvo to every man's right, to be preserved.

Colonel Cox. For the reasons aforesaid, I am for rejecting the Bill; besides, the allegations are not proved, which ought to have been done, as in the case of a patent. Otherwise, it is void.

Lord Lambert. Though Lord Cobham was a delinquent, the creditors were not. Many of them have faithfully served you. It was told you that the man had ingenious things in him for the public good. I know matter-of-fact, as that he is in debt on account of sums contracted for the public service.

Four reasons offered to you.

1. The corruption of blood, which, I have heard, bars all estates.

2. That those that petition against the Bill have not the right.

3. That it is for payment of his debts.

4. That by the common law, tenants in tail may cut off entail for payment of his debts. This consideration is equitable, and I desire, so far as it may stand with justice, that it may be considered.

Lord-Chief Justice. I do agree with this noble Lord, that, so far as justice will allow it, the consideration for payment of debts ought to be allowed; but I never knew this House pass a law to the prejudice of any person without his consent. Jerningam's title is not heard at all before you. It is fit Lord Cobham's estate should pay his debts, but not that another man's estate should pay these debts. Their own counsel confesseth some have a right. How, then, can you pass this law, without hearing all parties. Sir William Brooke faithfully served you, and died of a great sickness in your service, not of the shot.* The Long Parliament thought fit to relieve his children. He died possessed of this

* Yet *Whitlock* records, "April 16th, 1647, Orders for four thousand pounds, for the Lady Brooke and her children, whose husband, Sir William Brooke, was *slain* in the Parliament's service."

estate; and, after his death, the estate came to Lord Cobham; so that Sir William's children were wholly left destitute. Again, this debt of Lord Cobham's was not contracted when he was possessed of this estate, but before. Again, Sir William Brooke died in debt too, and this land was then liable, if he had had issue male.

Mr. Attorney-General. Lord Cobham has had the possession of this estate thirteen years; whereas, if Sir William had not died in your service, he might have had the possession all this time, and so have provided both for his own debts, and made provision for his children. The Long Parliament considered this; and if it were now before you equally, to which you will show favour, surely you will prefer him that has served you. The suggestions on Lord Cobham's side are not proved. All parties have not been heard. It is acknowledged some must be wronged by this Bill; therefore, I desire it may be rejected.

Captain Baynes. If this Bill be rejected, I shall hardly hereafter give my consent to the cutting off any entail for payment of debts. It is impossible to hear all parties that may pretend to an estate. There is a clause in the other Act, which does restrain all the issue of the two attainted persons, from whom these daughters claim. I desire this Bill may pass for a law.

Mr. Robinson. We must not rob Peter to pay Paul; make one man pay another's debts. It is but just, that when Sir John Cobham dies, (I cannot call him Lord; he is an Oxford Lord*) that it should revert to the children of Sir William. I remember something of his good service, and of the bad service of the other. He has another estate in Lincolnshire, whereby he may pay his debts; but he would lay it upon that estate which he knows must revert to these children. Again, the allegations are not proved. They have abused you, and they ought to be punished. I desire it may be rejected.

* One who formed part of the King's House of Lords, at Oxford, in 1643-4. See *Parl. Hist.* xiii. 46.

Mr. Goodwin. This is a just Bill that my Lord Cobham desires, for payment of his debts. It is granted, by the common law, he may do it, as tenant in tail, and all he desires here is but that he may be left at liberty from that restraint of the Act *tertio Jac.* which was only to preserve the estate in the name, and to no other purpose, now the name is likely to be extinguished.

Mr. Bond. Mr. Goodwin has twice called Sir John Cobham, Lord Cobham. I desire he may pay his fine, viz. 20*s.* The counsel called him (viz. Mr. Finch) ten times. Here is a justice of the peace in the House. I desire he would issue out his warrants to levy the fines upon all that have called him Lord Cobham.

Mr. Robinson. This gentleman, and all that have given him that title, have transgressed the Act,* and ought to pay the penalty; we have no need of a justice of peace in this case. No justice of peace can act within these walls. I desire that the gentleman may lay down his 20*s.* upon the table, and all the rest that have called him so, that warrants may issue out to levy the fines upon them. I shall cite you a case in the Long Parliament, of a gentleman that swore in the House, and he was enjoined to lay down his fine upon this table. I desire it may be put to the Question, whether these fines shall not be paid.

Mr. Goodwin. I did not call him Lord Cobham. I spoke of old Lord Cobham, and the settling of the estate by him.

Major-General Disbrowe. If such a law be violated, it is fit it should be put in execution, and that every one that has wilfully called him Lord Cobham should pay their fines.

Mr. Speaker. By this rule every member must pay his fine, for you have called him Lord Cobham in the Bill.

Colonel Sydenham. I am beholden to these gentlemen that minded me of it, for I should also have called him Lord Cobham; but, as I take it, he claims not by the new patent only, but as the title is an ancient descendible title.

* Probably that passed in 1651, "for making void all titles of honour, dignity, or precedences given by the late King, since the 4th of January, 1641."

Major-General Goffe. If it were so frequent to call him so, as the members might well mistake it, I desire all may pay their fines that have given him that title.

Resolved, that this Bill may not pass for a law.

Resolved, that this Bill be rejected.

Colonel Sydenham. Let some days be set aside for the dispatching of the most material Bills before you, and not let one business jostle out another, by new matter every day, especially the business of the Spanish war. Two days a week may be set apart for the business.

Mr. Bond. Many members are gone, the beginning of this week, others are agoing, as I hear. I desire a day may be appointed to call over the House, lest we be called a rag of a Parliament, as formerly we have been called. They ought not to go away without leave.

Mr. Robinson. I would not have more leave given to one than another. We have all occasions to be at home, but the public service ought to be preferred. No man can depart this House, without leave. I desire either that we may all go home by adjourning for two or three months, or that all may be enjoined to attend. Either adjourn, or rise, or let us all fall together to it, and dispatch it out of hand.

Sir William Strickland. Though I have as many occasions at home as another, yet I should be loth to adjourn till the business of most concernment before you be dispatched. To this purpose I would have you fall upon some bills that are most material, as that of the war with Spain, for carrying that on, and that all the members might be enjoined to attend, and be called at some day next week.

Major Brooke. The weather is cold, the days short, and we do little. I desire to second that motion, that we may adjourn for two or three months, and in a short time we shall dispatch what is before us. For us to attend, and others be absent, it is very unreasonable.

Dr. Clarges. I hope you will not think of adjourning, till you have done some of your business, at least that which is most material, as provision for the Spanish war, which can no more move without nerves and sinews, than can the natural

body. I desire you would fall close to that, and cause all the members to attend by such a day, Wednesday sennight, or about that time.

Captain Fiennes. We had better never have met than to adjourn now. We cannot kill the king of Spain, nor take Spain or Flanders, by a vote. There must be monies provided, and other Bills passed. Shall we rise, and pass but four Bills. It is private business jostles all out. I would have all the members called, and fall to our business.

Mr. Downing. I live near, and have least reason to be heard to this business; yet I hope you will not think to adjourn till you have dispatched some great business before you.

He did enumerate several Bills, as excise, recusants, probate of wills, &c. Desired two things to be done: that the members might all be called by such a day, and that two or three days in the week might be appointed for the Spanish business: Monday for private business, and the rest for public business of most concernment; but, yesterday and today both, we have been upon private business, which, as was pretended, would hold us but a quarter of an hour.

Captain Hatsel. After some of your greatest business is over, the motion to adjourn for some months may be seasonable, in respect of the cold weather and short days.

Major-General Disbrowe. You should appoint two days a week for Spanish business; to begin on Tuesday. I should be as willing as any man to adjourn, but it is neither safe nor honourable to adjourn till that be done.

Mr. Fowel. We cannot adjourn, till we have made provision for the war we have voted. I desire the members may be all called, that it may be done with a general consent, especially in monies.

Resolved, that Tuesday and Thursday in every week be appointed for the business of monies.

Mr. Robinson, Mr. Butler, and *Mr. Moody* proposed that two days a week may also be set apart for public business.

Sir William Strickland proposed that the House should be called on Christmas Day, that it might be known who are absent, either upon that occasion or any other.

Captain Baynes. You will take no notice of Christmas Day in this House. You have appointed Tuesday and Thursday for Spanish business. I hope you will not put that business off, and call the House on Thursday, because it is Christmas Day.

Mr. Downing stood up to speak to that business, but took occasion to vindicate himself from what the Speaker had reproved him for, when he said yesterday was taken up with private business: said that the city business was a private business.

Mr. Speaker. By the orders of the House, no member ought to stand up and plead for himself upon pretence of speaking to another business. He ought to have said any thing at the time in his own justification.

Major Burton. It is very hard that those that have constantly (except in cases of sickness) attended all this time, should now be debarred from taking the same privilege to go home upon their occasions. I myself have business at home; a servant out of his time the first of January, and nobody to look after any thing. I shall not desire to go without leave, no more ought others to have gone.

Mr. Highland. You should pass a vote, that those that are gone without leave may appear here on Monday se'nnight.

Major-General Kelsey. Wednesday se'nnight is the soonest time that you can have them attend. Otherwise they will not have notice. It cannot answer your end to call them sooner.

Major-General Boteler and *Colonel Clarke* proposed to appoint Thursday next to call the House, and to give a fortnight's time for them to attend.

Mr. Ashe, jun. Monday fortnight to attend.

Mr. Bond. It is presumed that every member ought to attend. If you give them a small time it is sufficient. Twenty resolve to go down on Monday next. If any go down without leave it is a breach of privilege of Parliament. It is reported abroad that we are but a rag of a Parliament. They say that we

are now made up of none but soldiers and courtiers, and I know not what friends to my Lord Protector. This is a scandal to us.

Major-General Disbrowe. I hope no man thinks it a scandal to be a soldier, or my Lord Protector's friend; but this is not a time of day to quibble, or make long speeches. I desire a short day may be appointed to call the House.

Sir Gilbert Pickering. That noble person is mistaken. It is not said that it is a scandal to be a soldier, or the Protector's friend; but he (Mr. Bond) says it is a scandal abroad upon them. We desire not to monopolize this trouble; but that all may attend.

Major-General Jephson. Nobody, I hope, questions but you may fine a man for departing without leave of the House, for it is to be presumed every member is here. I desire you would appoint some day when the House may be called, that every member may be present, especially at a debate when monies are to be had, that all may mutually consent to it.

Colonel Hewitson. You need not take notice of your members' absence, as in relation to people's talk. If we stay all business till we have a full House, we shall by that rule do nothing, till the time you limit them to attend. It is supposed every member is near, where he may come if he please; so the country cannot say we carry it by parties. Every one ought to be here.

Lord Lambert. It is a great fault for the members to leave you in this business. It is a sin and shame, indeed. I would have the House as full as may be. But I would have you distinguish between such as are approved* and such as are not; and that you would appoint how the manner of summons shall be.

The Master of the Rolls. I shall not deliver my opinion in this matter; but only to the matter of fact. I never knew any success of these votes† in other Parliaments. There may be an ill consequence of it by calling over the House at this time. Those whose conscience will not tie them to the duty, your orders will not; for they will be here for a day, and be gone.

* By the Council.—See *infra*. † For a Call of the House.

Mr. Robinson and *Sir Thomas Wroth*. In the Long Parliament we paid our twenty pieces in gold, before we were admitted into the House, for not appearing upon summons. Great things are likely to be moved in this House; whatever come, God will direct me what to say. It is true what is said of us, that we are a party that will do what shall be desired.

Lord Whitlock. Let the old order be reinforced, and Wednesday sennight be the day. I am against calling the House. It will not be for your service.

Mr. Bampfield. I would have these words left out, "such as are approved or shall be approved;" I hope the Council are by this time satisfied of those that are left out, that they are now persons capable to sit. I know one person in town that was excepted, a very pious man, and there are others. I desire all may be called in now; it is surely time; to the end we may carry things on with more unanimity and general consent, especially when we come to tax the people.

Major Brooke. I desire to second that motion, that the restraint of the members may now be taken off; that, by a general consent, we may debate the business before us: all be admitted, else all go home.

Sir Gilbert Pickering. There is more weight in this question than to pass it in such a short space.

Lord Lambert proposed, that the gentleman may explain himself, what he means by having all the members called.

Mr. Godfrey stood up to speak; but Sir Gilbert Pickering called him down, by saying he had the least reason to speak of any man in the House; for he had absented himself for three or four months.

Mr. Bampfield. To the orders of the House. That gentleman ought not to have called Mr. Godfrey down. It was an affront to the meekness of the House, to say any person ought not to speak, &c. I desire he may be called to the bar for it. He ought not to have called him down.

Sir Gilbert Pickering. Before he explain himself, I desire this gentleman may show the reason of his two or three months absenting himself from the House. That was my reason why I interrupted him.

Lord Strickland. I conceive that the gentleman (i. e.) Mr.

Bampfield, who called Sir Gilbert Pickering to the bar, might be called to the bar himself to explain, &c.

Lord Lambert. I never intended the least heat when I first moved this business, and am sorry that this should be the issue. I desire the House would adjourn till we are in a better temper. The debate upon the excluded member was well laid aside before; I wish it may not breed further dispute.

Major-General Disbrowe. We grow hungry, and consequently angry. I desire you would adjourn this debate till Monday morning.

Lord Whitlock. I am sorry for these reflections, if it could have been helped. I hope we all sit here upon the foot of one account, every man serves for his country; and I desire to adjourn.

Major-General Goffe, Major-General Whalley, and *Mr. Nathaniel Bacon.* I would not have us part in heat; but bring this business to some question first. What will be said abroad; that we were upon a debate, and could not end it; but rose in anger, and so let the sun go down on our wrath. I like not the consequence of such a business.

Major-General Boteler. I hope we shall no sooner be angry with one another but we shall be friends again. This heat was soon stirred: I hope it may as soon be laid aside. I desire it may be done before we rise, and that you would come to some question.

Mr. Speaker very discretely laid aside the old resolve in this case, to prevent further debate, and so ended the dispute.

Resolved, that Wednesday sennight next the House be called.

Lord Lambert delivered a petition from James Noble,* expressing a great deal of sorrow and penitency that he should offend the House and the Committee. He was not able to undergo the correction, and had not wherewithal to maintain himself; therefore humbly prayed that he may be released, and he will become a new man.

Major-General Whalley. I am glad this place has wrought such a good work upon this man; I have heard them say that

* See *supra*, pp. 148—150.

the Knight that kept Bridewell, could do miracles. He could make the dumb to speak, and the lame to walk, the lazy to work, &c. It seems this has had the same operation upon this fellow, and seeing he expresses so much penitency, and begs mercy, I desire he may be released.

Resolved, that James Noble be forthwith released from his imprisonment.

Mr. Speaker. I have another business to offer to you. A poor gentleman, Lieutenant-Colonel Owen, is dead, and lies above-ground, his friends having nothing wherewithal to bury him. I desire that it may be referred to the Commissioners for lame soldiers at Ely House, to take care of it. A matter of 5*l.* would perform the whole business.

Colonel White. If the Parliament will order it. it may be done.

Mr. Goodwin privately spoke of 2*s.* a piece, and *Sir James Mac Dowel* of 2*s.* 6*d.* a piece, at the doors, by every member to it; but they spoke not out.

Resolved, that it be referred to the Commissioners at Ely House to take care for his burial, and that they issue out 5*l.* for that purpose.

Per Captain Hatsel Resolved, that Major Burton have leave to go home.

No Committees sat this night but the Committee for the petition of the Aldermen and Common Council of London, Mr. Goodwin had the chair. There were Mr. Robinson, Alderman Foot, Colonel Hewitson, Major-General Berry, Major Aston, Colonel Blake and others. We did nothing, but adjourned till Wednesday next, Inner Court of Wards.

Mr. Robinson thought fit that there should be some person assigned as defendants in the petition.

Resolved, that the House be moved for additional power to the Committee, to send for persons, perhaps witnesses, and records.

The Committee for Trade; and the Committee, for courts at York; both in private Committees, and that was all I saw.

The House doors were shut before five o'clock.

Monday, December 22, 1656.

A Petition of the Earl of Derby* was read and referred to a Committee.

The Petition of Captain Ned Lister, against Mr. Maynard, in the behalf of his wife's portion was read and committed for Wednesday afternoon at two, in the Inner Court of Wards.

Colonel Rouse against the Petition, desired it might be left to law.

Major-General Howard offered the tenants of Westmoreland's petition, but the Speaker said there were two or three petitions upon the file, to be heard first.

The Petition of the tenants of the manor of Hanslop, in the County of Bucks,† for lands of 1,000*l.* per annum, which they hold by lease, against Thomas Tirrell, Counsellor-at-law.

He hath cut down the wood where the petitioners ought to have house-bote;‡ hath raised more monies out of those woods and forfeitures, than the purchase cost him; he hath threatened many of their lives, &c.

Sir Thomas Wroth and *Mr. Goodwin.* If you receive all petitions of this nature, there will be no need of paying salaries to the judges. I see nothing in the Petition but what Westminster-hall may determine. I desire it may be rejected.

Captain Baynes and *Mr. Robinson.* If it were no more than the title of this petition, it were reason enough to reject it; for it is directed to the knights, citizens, and burgesses,

* Whose father had been taken prisoner soon after the battle of Worcester, in 1651, and beheaded under the sentence of a court-martial. The mother of this petitioner was the heroic Countess of Derby, who defended Latham House and the Isle of Man, against the forces of the Parliament. Mr. Granger says, that "she was the last person in the British dominions that yielded to the Republic."—*Biog. Hist.* iii. 22.

† "Late parcel of the honour of Grafton, in the County of Northampton."—*Journals.*

‡ "An allowance of timber out of the Lord's Wood, to uphold or repair a house."—*Dict. Anglo-Brit.*

assembled in Parliament. This looks upon us as a House of Commons; as if the House of Lords were alive. Besides, the petition in itself is not to be retained; for though it pretend for the Commonwealth; yet it is between party and party: and the Long Parliament, by ordinance, did declare that they would meddle with no such business; unless in cases of mal-administration.

The Master of the Rolls. This day hath brought you work enough for half a year, and another day will stuff you sufficiently. There is relief enough at law. I would have you to reject this petition, if it were for no other reason but for the countenance of justice.

Lord Whitlock. This petition is clearly determinable in the inferior courts of justice. This gentleman had a lease for years, determinable at Michaelmas next, and has purchased the reversion. Now they would overthrow all.

Major-General Disbrowe and *Major-General Boteler.* It claims a right for the Commonwealth, and it will be proved the petitioners are well affected to the Government; the defendant a delinquent under decimation. If there were no more than between party and party, I should move for rejecting it; but it is the public concernment, profit to the Commonwealth.

Lord Chief-Justice. There is nothing in the petition but what the Courts of Justice may relieve them. I desire it may be rejected.

Sir Gilbert Pickering. If you do reject it, you will not do it with disgrace; for it is of public concernment. I brought in the petition.

Colonel Carter. I would inform the House respecting Mr. Tirrell. I believe he is not under decimation, for he has been a colonel for us.

Resolved, That this petition be laid aside.

Lord Fleetwood offered a petition in Serjeant Dendy's behalf, touching some adventures for Ireland by his Highness's command; but the Speaker directed the petitions ordered to be read.

Lord Whitlock said he would not hinder that petition; but desired that after that, the petitions might be read in order.

Major Morgan proposed, for saving time, to read that petition first.

The petition of the tenants of Epworth,* in the Isle of Axholme, in the county of Lincoln, touching some commons encroached upon, the lords there setting 12*d.* an acre upon them. They desired to be left to law, or relieved here.

Mr. Hall offered another petition from tenants of the same place. For saving time, he desired both might be considered together. Both the petitions were read, being much to the same purpose. The people pretend they are Cavaliers, and threaten them with swords, &c.

Major Morgan. I am not against the committing of these petitions, to the end that both parties may be heard. I desire to offer you a petition on the behalf of the participants and tenants and freeholders, within the Isle of Axholme.

It was directed to be read. It complained against the tumults of the former petitioners, partly occasioned by the instigation of Lieutenant-Colonel Lilburn,† and Major Wildman,‡ and one Munk; one man killed, and fourteen men wounded; all laid waste. Complaint was made to the Exchequer, but they could not be relieved there. It was left out of the Act of Oblivion, upon Major-General Whalley's report, that the tumults were very rebellious, and would not be suppressed without armed men.

Mr. Nevil offered a petition to the same purpose.

Major-General Whalley. Part of this isle lying in Not-

* "The inhabitants of the towns of Epworth, Belton and Butterwick, with divers others, being the major part of the freeholders and commoners, within the manor of Epworth," &c.—*Journals.*

† See *supra*, p. 156.

‡ He had been imprisoned, in February, 1654, for writing, as preparatory to an insurrection, a paper, entitled, "The Declaration of the Free and Well-affected People of England, now in arms against the tyrant Oliver Cromwell, Esq."—See *Whitlock.*

tinghamshire, and part in Lincolnshire, they have spent their monies, and now come to knocks. Our forces have been troubled to suppress the tumults. The Council has been troubled with the business. I desire it may be referred to a Committee, either to end the business, or to state the matter of fact.

Mr. Speaker. I have a letter to acquaint you with from his Highness.

Mr. Robinson. I move that the level of Hatfield in Yorkshire,* may also be referred to this Committee; it being all one business. I am nothing concerned in it, but as it relates to the county I serve for.

The petition of sixty gentlemen in Hatfield Level, to the same purpose.

The petition of the French and Dutch Protestants there, to the same purpose.

Resolved, that all these petitions be referred to a Committee, to send for papers, persons, witnesses, and records.

The Committee appointed, and to meet on Wednesday in the Exchequer Chamber, at two o'clock.

Resolved, that all the long robe be added to this Committee.

Mr. Robinson was against it, who moved, and it was

Resolved, that all that come may have voices.

Mr. Speaker. Three petitions more must be read; but I desire that his Highness's letter may be first read.

The letter was read: first, the superscription, directed to Sir Thomas Widdrington, Speaker, to be communicated to the Parliament. Then the name, Oliver Protector. Then the letter. It was concerning the arrears due to the brigade of Cheshire,† who bore a great share in the heat of Worcester fight, and ever since have been unpaid.

A petition from the Cheshire brigade to the same purpose, that they might be relieved, for their arrears, out of the pub-

* "Hatfield Chase, in the counties of York, Lincoln, and Nottingham." *Journals.*

† "To our right trusty and right well-beloved Sir Thomas Widdrington, Knight, Speaker of the Parliament, to be communicated to the Parliament, on behalf of the Cheshire brigade." *Journals.*

lic lands, the King's, &c.: and that two months' pay in arrear be paid out of some treasury.

Mr. Robinson and *Mr. Speaker* proposed that it might be referred.

Resolved, that this petition, with the papers annexed, be referred to a Committee.

Resolved, that it be referred to the Earl of Derby's Committee.

Resolved, that Major-General Bridge and Major Porter be added.

Per Major-General Lambert.

Resolved, that Major Brooke, Mr. Marbury, and Colonel Ireland be added.

A petition from Andrew Hall, that has had a great loss by fire. He desires something like a brief for his relief, that he may have a collection from churches in Essex, &c.

Mr. Fowell proposed, That this petition may be laid aside. There is another way, by certificate from justices of Peace, and directions of his Highness.

Mr. Robinson. This person, if the Bill now before you, touching rogues, were passed, might come within the compass of it. I hope you are not going about to grant briefs to all that will ask them. There are other ways to relieve the petitioner.

This petition was laid aside, without a question.

A petition against Joseph Holland, by John Hervey, for breach of trust in purchasing of lands. He was dismissed in Chancery, and has no remedy at law, because an alien is in the case.

Mr. Nathaniel Bacon proposed, that this petition be referred.

Resolved, that this petition be referred to the Earl of Derby's Committee, and to present their opinion.

Per Colonel White.

Resolved, that Sir Gilbert Pickering and Mr. Godfrey be added to this Committee. A plot, a jeere.*

* Thus the MS.; and in the following paragraph

Per Major-General Boteler.

Resolved, that Mr. Bampfield, Lord Strickland, and Mr. Tymbes, be added. A plot, a jeer.

Major-General Howard presented the tenant's petition. Mr. Speaker took it, and said, two petitions were to be read, in order, before it; yet opened the title, that it was from the tenants of Westmoreland against Lord Pembroke,* and threw it from him upon the table.

Per Lord Whitlock and *Mr. Attorney-General.*

Resolved, that Mr. Vassall's petition be read on Monday next.

Colonel Bingham's petition read.

Mr. Berkeley offered Sir John Stowell's† petition, and desired it might be read, on Monday, the second time.

Mr. Speaker. The House has it already.

Mr. Robinson. I desire that the petition may be returned to the gentleman back again. We have had enough of him already.

Mr. Bampfield and *Major-General Whalley.* The least you can do is to give it a hearing. It concerns the faith of the nation; the faith of the Parliament. The last Parliament thought themselves obliged.

Mr. Robinson, admitted to speak again, said, I desire the gentleman may have it returned. It may hold as long as James Nayler's business.

Mr. Downing. When the petition is read, there is time enough to speak against it. I desire the petitions in order may be read.

The petition of Edward Dendy read, set forth, that he had 200*l.* per annum, land in Ireland, settled upon him, for his eminent services, per the Lord Deputy, and the Commissioners, but he is now put to trouble by the adventurers, and

* His father had become one of the representatives for the county of Berks, on the dissolution of the House of Lords in 1649.

† See *supra,* p. 165, *note.* He had been condemned to forfeit his "lands and estate;" and an Act passed "October 13, 1653, for confirmation of their sale."

Sir John Barrington particularly. He desires the suits may cease. Some Acts of Parliament whereby the adventurers claim, are with a saving of former grants.

Lord Fleetwood. There is another petition to the same purpose of Sir Hardress Waller. I desire it may be referred to the same Committee.

Lord Lambert proposed, that all the adventurers may be considered by the same Committee.

Resolved, that these Petitions be referred to the Committee for Irish Affairs, to Report their opinion.

Lord Fleetwood, Colonel White, and *Colonel Holland.* The adventurers have not their due encouragement. Many obstructions lie in the way, which hinders your plantation. They desire it may be referred to the Committee to find out an expedient to further that work.

Mr. Attorney-General and *Mr. Margetts* rose to second the motion, that the obstructions might be considered, and an expedient found out, to remove it.

Major-General Howard proposed, that Mr. Disbrowe be added to this Committee. This motion had like to have thrust out the business.

Dr. Clarges and *The Master of the Rolls* proposed, that the business of the inhabitants of Gloucester might be referred to the same Committee. They have lands assigned them in Ireland, for their losses; valued, per last Parliament, at 10,000*l.* They suffered their houses to be burned down for your service. They have done eminent service for you.

Major-General Whalley proposed, that they might have some recompense out of Ireland. Colchester was considered in the like kind. They have done you service which ought not to be forgotten. You had not sat here, I believe, but for them. They only hindered the king's coming to London. I desire it may be referred to the same Committee.

Major Morgan. This is settled already, by Act of Parliament, to the value of 10,000*l.*

Captain Crofts and *Mr. Attorney-General.* True, it is settled by Act of Parliament; but the Commissioners for the

adventures of Ireland send them hither, and these Commissioners back again to Ireland. It is the fault of the Act that it is not said who shall execute it.

Mr. Robinson. Hull suffered in the same kind; and Lyme, and divers other places, which ought to be considered.

Resolved, that the explanation of this Act, touching the allowance of 10,000*l.* to Gloucester, for their losses in this service, be referred to the same Committee to find out an expedient, &c.

The Petition of Captain John Arthur was read.

He hath done good service: First, took up arms in Dorset, till betrayed and taken prisoner by Sir Antony Ashley Cooper. Hath laid out 2000*l.* and odd, which he borrowed, and pays interest for it at 8*l.* per cent., which comes, by single interest, to 1500*l.* He is threatened daily to be arrested for the sums aforesaid, being unable to pay them.

Mr. Bond. The Committee of Dorset gave him public faith for it. He is very poor, and hath suffered much for you. I desire it may be referred to the Earl of Salisbury's Committee.

Captain Baynes. I am against the petition, and all of this kind, for the poor people's sakes, who increase their charge by staying here, and undo whole families, as in the Long Parliament. I know you are not able to satisfy them.

Mr. Robinson. Sir Anthony Ashley Cooper, by whom this gentleman suffered, may satisfy him; for we are not able, at present, to do it. We shall put the poor people to charge by attending, and do them no good. I wish it were referred to the gentlemen that serve for Dorset, to find out a way to satisfy the petitioner.

Mr. Butler. Sir Anthony Ashley Cooper has done you good service,* and the petitioner doth not say his sufferings were by him.

The petition of Edward Scot of Scot's Hall, read.

* This versatile politician, created Earl of Shaftesbury, by Charles II., had now become an anti-royalist, and, according to Lord Clarendon, "gave himself up, body and soul, to the Parliament."

He married Katharine, daughter of Lord Goring.* She eloped from him, and at Oxford, and other places, had children by other men. She hath contracted great debts, &c. Desires he may be divorced from her, that those children may be declared bastards, and not inherit his estates, and that he may be relieved against those debts. He would have some of the long robe consider it and give their opinion.

Major-General Kelsey. I have an Act in my hand for this gentleman's relief, if you please to read it. It will shorten your business. I am satisfied in the matter of fact.

Sir Thomas Wroth. It is not every man's luck to have a good wife. No man in this House has so bad a wife. It is fit the gentleman should be relieved, that bastards may not inherit his estate. He is a person of ancient family,† and highly injured by the debts she has contracted. We were petitioned in the Long Parliament. The Lord Chief-Justice has settled alimony upon her, but she deserves no more than a dog. I would have it cut off, and that the Bill be read.

Mr. Robinson. It is no jesting business. It is a sad case to have such a wife; and to have a posterity put upon him that is none of his own. I desire the petition may be referred to a Committee, to hear both parties, and then judge.

Lord Strickland. I would not have us to suppose this business to be so, till we have examined it. As the petitioner is a person of quality, so is she; but for us to judge parties unheard, is very unequal. By this means any man that is weary of his wife may be quit of her by petition.

Mr. Attorney-General. This business is notorious. The matter of fact is but too true. I wish there were a law in general provided for this. It is only fit for a Parliament. She

* He had been condemned, by the High Court of Justice, soon after the King's execution, to suffer death as a traitor, but reprieved and set at liberty in May, 1649. See *Whitlock; Parl. Hist.* xix. 126.

† Probably the grandson of Sir Thomas Scot, of Scot's Hall in the county of Kent, who died in 1594, and on whom a poetical epitaph, and certain historical notes, were written by his kinsman, the justly celebrated author of "The Discoverie of Witchcraft," published in 1584. See *Reynolde Scot* in *Athen. Oxon*: Peck's *Cromwell Collection*, No. 5, p. 28.

sought for alimony* in the Chancery, but durst not prosecute it. It may as well be heard upon a bill as upon the petition, as in Sir John Brooke's case the other day.†

Mr. Bodurda. I propose, that the gentleman may be called in, to own his petition, though against his wife. I hear he is a very weak man, and under some restraint.

Colonel Welden. I spoke with the gentleman last Friday, and I affirm that he did own the petition.

Mr. Bampfield. The business may be heard upon the Bill as properly as upon the petition; and though he be a weak man, as is pretended, his wife ought not to abuse him.

Colonel Whetham. As weak as he is reported to be, he has been a captain in your service.

Mr. Bond proposed, that the Bill might be read. The case upon the petitions in the old Parliament is very notable.

Major-General Disbrowe. We shall grow angry at one.‡ I desire the Bill may not be read, but refer it to a Committee.

Mr. Recorder. It is not parliamentary, under colour of a petition, to bring in a Bill. It is giving too hasty credit to a business of this nature. By this rule a Bill may be brought in to every petition. Again, it is very unequal to condemn, before parties are heard on both sides.

Mr. Berkeley proposed, that it might be referred to a select Committee.

Resolved, that this petition be referred to a Committee to examine both parties and to bring in a Bill if they think fit. To meet to-morrow in the Duchy Chamber.

Mr. Speaker. If you please but to sit two hours. I shall be ready to sit with you. (He offered this twice). If you will observe order, two hours will dispatch it; or otherwise adjourn.

Mr. Robinson proposed to rise, and not read any more at this time of the day.

* "This portion, or allowance, which a married woman may sue for, upon separation from her husband."—*Dict. Anglo-Brit.*

† See *supra*, p. 184.

‡ Probably having exceeded the dinner hour. See *supra*, p. 36, *note*.

Major-General Howard proposed to read the tenants' petition, otherwise appoint it to be read the first thing on Monday next.

A great confusion for half an hour; five or six constantly up at a time to offer petitions.

Resolved, that the petitions now upon the table be read on Monday next in order.

In the midst of this vote, divers petitions were cast upon the table in a very confused way, and excepted unto *per* Mr. Robinson, Mr. Ashe, junior, and Mr. Bampfield, as anti-parliamentary.

Colonel Markham stood up very often to offer a petition, but he could not get in, and was very angry with Mr. Robinson for interrupting him. Colonel Markham said, that he took more liberty to speak than any man, and had spoke two or three times to this business. Mr. Robinson stood up to justify himself, and reflected upon Colonel Markham as if new members were not well acquainted with these proceedings. High dispute seemed likely to arise, but Mr. Speaker determined the controversy by leaving the chair, without a question.

Mr. Skippon told me, as I came home, that they were at very high words both in their seats and at the door. Query, How they will be friends, for Mr. Robinson has a very good memory of, &c.

A quaker woman, as we came out, told the Speaker and every one that passed by, that justice was turned into wormwood, and equity into gall; adding, the mouth of the Lord hath spoken it.

Colonel Whetham offered a petition in the behalf of Colonel Wither.

Mr. Speaker said he had also a copy of very good verses from the same hand, to offer.*

* Probably his *Boni ominis votum* described by *Wood,* among the numerous productions of George Wither, as "printed 1656. This poem," he adds "was occasioned by the summoning of extraordinary grand juries out of the eminent Baronets, Knights, and Esquires, gentlemen to serve in their counties, at a summer assizes, 1656." *Athen. Oxon.* (1692),

The grand Committee of religion could not sit for want of number. There was a Committee for a petition in the Speaker's chamber. Dr. Clarges had the chair.

Few other Committees sat, except the Scotch Committee.

Cousin Robert Blackiston dined here, and I drew over his petition, in Mr. Bowes's behalf, to be counsel. Spent the afternoon.

Tuesday, December 23, 1656.

Lord Eure brought in a petition from a great many persons (well affected to the present Government) of the North Riding of Yorkshire; consisting of many particulars, as to the abating of Assessments and the Excise, (if it stand with conveniency of affairs) and proposing to lay all the burthen of the war upon them that are the cause of it, that the old army may be encouraged, and the new charges laid aside. It recommends that no delinquents may bear office in civil or

ii. 277. His most popular satire for which, in 1613, he "was committed prisoner to the Marshalsea," was entitled "Abuses stript and whipt." *Ibid.* 274.—See *Hudibras*, part i. *canto* i. 646.

There were published, in 1785, with a view to bring this writer into notice, "Extracts from Juvenilia, or Poems by George Wither." Bishop Percy also has preserved, with distinguished commendation, his "Shepherd's Resolution," and "The Stedfast Shepherd," prefixing the following biographical notices.

"George Wither was born June 11, 1588, and, in his younger years, distinguished himself by some pastoral pieces, that were not inelegant; but growing afterwards involved in the political and religious disputes in the times of James I. and Charles I., he employed his poetical vein in severe pasquils on the court and clergy, and was occasionally a sufferer for the freedom of his pen. In the civil war that ensued, he exerted himself in the service of the Parliament, and became a considerable sharer in the spoils. He was even one of those provincial tyrants, whom Oliver distributed over the kingdom, under the name of Major-Generals; and had the fleecing of the county of Surrey; but surviving the Restoration, he outlived both his power and his affluence; and giving vent to his chagrin in libels on the court, was long a prisoner in Newgate and the Tower. He died at length on the 2d of May, 1667." See "Reliques of Ancient English Poetry," (1794) iii. 190, 264.

military places, and that they be especially purged out of the House; that a Court may be erected at York, and a Court for Probate of Wills, and that no *certioraris* may lie, &c.

Lord Lambert, Mr. Robinson, Mr. Bampfield, Mr. Downing, Captain Baynes, Major-General Disbrowe, and *Sir William Strickland,* spoke for the reading of it; and that the Lord that brought it in might have the thanks of the House given him for it.

Colonel Sydenham and *Mr. Bodurda* excepted against some parts of the petition, as tending too much, at this time, to discourage assessments, and to encourage others to petition for the taking off Assessments, &c.

After half an hour's debate upon it,

Major-General Lilburn for it.

Resolved, that the noble Lord that brought in the petition, do let the petitioners know that their petition had the good acceptance of the House.

It was moved to give thanks; but passed off with a compliment much like a laying it aside, &c.

Colonel Jones. Divers Londoners are attending at the door with a petition. I desire the petitioners may be received.

It seems it was a petition touching James Nayler, for remitting his punishment, &c., as Mr. Downing apprehended it. Nobody seconded the motion, but the orders of the day were called for.

Debate upon Captain Baynes' Report resumed.*

Second Article, upon the 2000*l.* assessments; arrear upon the Temple.

Mr. Fowell. It is very unreasonable to lay any assessments upon the Inns of Court. The inhabitants there are young gentlemen, that have nothing but their books and clothes, &c., and may say with Bias, *omnia mea mecum porto.* They are Universities of the law, and surely ought to have the privileges of the Universities. I believe they are not all worth 200*l.* How then can they pay 2000*l.* assessments? I cannot agree with the Committee in the Report, as to that part.

* See *supra,* p. 179.

Sir Thomas Wroth made a long story to excuse the Inns of Court from paying this tax.

It will put a discouragement upon the students of the law, and affright the Universities. It will pull up the laws by the roots. The long-robe men may do you good service. They are good swords-men, as well as book-men. I desire this part of the Report may not be agreed with.

He fetched a long preamble from the Conqueror, and talked of the boughs of Kent.*

Colonel Sydenham. This is a new precedent, and it will be very inconvenient to lay an assessment upon the young students. Let us deal with the City of London as we do with the country; where, if assessments be laid upon such as are not able to pay, the country cannot be excused for that. It is very inconvenient that the assessment should be laid upon Inns of Court. I desire the City may pay this arrear.

Alderman Foot. There is an ordinance of Parliament for what the City has done in this business. It is no new thing. Assessments have been laid there long since, only they have not been paid. It is not laid upon the students.

Mr. Attorney-General. This assessment is very unreasonably laid upon the Inns of Court. The City ought to pay it. The students have nothing wherewithal to pay it. I am sure that I pay, to the purpose, assessments for my living in the City.

Lord Chief-Justice. This is a very hard case. It would

* "As the King (William I.) was riding towards Dover, at Swanescombe, two miles from Gravesend, the Kentish men came towards him, armed, and bearing boughes in their hands, as if it had been a moving wood. They enclosed him upon the sudden, and with a firme countenance, but words well-tempered with modestie and respect, they demanded of him the use of their antient liberties and lawes; that in other matters they would yield obedience unto him; that without this, they desired not to live. The King was content to strike saile to the storm, and to give them a vain satisfaction for the present; knowing right well, that the general customes and lawes of the residue of the realme, would in short time, overflow these particular places."—See Sir John Haywood's "Lives of the Three Normans, Kings of England." (1613.) p. 97; Sir W. Temple's *Introduction* (1695), p. 121.

never have been offered in former times. I never knew it in all my time. We that have many children, must, by this means, have their charge increased; for though this be laid upon our sons, the parents must bear it. I desire you would put this to the question. I question not but it will be thought unreasonable that this tax should be laid.

Captain Baynes. We were much divided at the Committee in this business. True, in the country, if they lay assessments upon the non-solvent, the county must answer it; but in this case we consider that the Inns of Court may be solvent enough, and the right was best to be determined here.

Lord Whitlock. Inns of Court never paid any assessments hitherto. You may as well make men pay for their lodgings; and men that come to inns to lodge, may as well pay. There is no precedent for it, in any age. I know the City lose nothing by the gentlemen of the Inns of Court. It is most fit, therefore, it should be sent back to where it was first laid.

Major-General Disbrowe. If this charge should be merely upon the gentlemen, or upon the clothes, or the like, I should be against it. But, methinks, they might as well pay, or abate of their ribbons and other extravagancies, as the farmer pays for every cow or sheep that he has.

Mr. Downing. What would the city do if the lawyers were gone. How would they pay their rents, much less their assessments. The study of the law is of more advantage to the nation, both to the gentry and others, than the mathematics, or their *datur vacuums.** Assessments were never paid by the Inns of Court before. St. Dunstan's parish pays but 100*l. per mensem*, which is a great parish; and the Temple pays 200*l. per mensem.* It is not the farmer that bears any part of the excise, custom, or assessments. The gentry bear all the burthen.

This encouragement to tax the Inns of Court was by a Parliament that had no great love either to law or learning.

* Perhaps an allusion to Hobbes's *Problemata de Vacuo*, or, more generally, to the philosophical disputes between the *vacuists* and the *plenists*.

I am sure, where I have any land, the tenants pay no assessment, but I pay all. It is a very unequal charge and unusual, to lay it upon the Inns of Court. I desire it may be re-assessed upon the city.

Sir Christopher Pack. The city had a law for what they did in laying this assessment. No privileged place was to be exempted, by the act, in express terms. And it is impossible, now, to lay it back again upon the city. It can never be done. I desire if you take it off where it is laid, that you will remit it.

Sir William Strickland. When the city was in a greater strait than now, Inns of Court never paid any assessments. It is strange how it comes to be laid now. I am sure the city loses nothing by the gentlemen of the Inns of Court. They spend all they have allowed, and more sometimes. It is unequal, to lay it upon them. I desire it may be charged upon the city.

Lord Fiennes. By this rule, the city may as well tax Guildhall, and all the halls and hospitals in the city. It was much against the sense of the Common Council that those Inns of Court were taxed; and I believe some that serve now for the city were against it. I desire the tax may not lay upon the Inns of Court, but that it may be re-assessed upon the city.

Alderman Foot stood up and said, that all halls, societies, and companys in the city were taxed, &c. He was going on, but Lord Whitlock called him down, for he had spoken before.

Mr. Robinson. It is just every man should bear his burthens. Many that live in the Inns of Court, have great estates and great places. It is fit they should contribute to the public charge of the nation. I would not have them privileged more than other places. They are fallen from their first constitution. No *readings*, nor exercises, now performed: in former times, *readings* were twice or thrice a year. Again, there are great rents taken for chambers there, which ought to be liable. I desire that you would agree with the Committee.

Lord President. It is very unequal to lay this tax upon the Inns of Court. This is the way to usher in this charge upon Universities. We ought to give all possible encouragement to the study of the law. These gentlemen have nothing but their cloaths on their backs. I desire that it may be charged upon the city.

Mr. Baron Parker. I hope you will not charge the students for the exhibitions allowed them by their parents. Those monies were once taxed in the country, as part of the father's estate, before they came to be allowed to the son. It is unreasonable to pay twice for one thing. It was never known in any age that Inns of Court paid. I hope you will not begin now.

Resolved, that the Temples be discharged from the arrear of 2325*l.* charged upon them for arrears of assessments.

Captain Baynes. Now that you do not agree with the Committee in this article, I desire you will resolve where this shall be laid, whether upon the city, or elsewhere.

Lord Strickland. It is fit you should put your sense upon it, whether the city shall bear it or some other place. Otherwise it will still remain controvertible. I desire you would put your issue to it. For my part, I think, inasmuch as the city has mislaid it, that they should pay it again.

Mr. Lloyd proposed, that it may be abated in the Exchequer, as it was in cases of subsidies; and that the city may be freed.

Mr. Attorney-General. I know no place so fit to pay it as where it was first laid. I pay both for my house, and estate, and profession, where I live in the city. I pay a third part of the assessments in White Friars; and that is a good share, I am sure.

Alderman Foot. Unless you abate this arrear, it is impossible for the city to pay it. It is lost. We knew not how to levy it. It will be more troublesome than all we have paid. I know not how it is possible to get it up.

Mr. Highland. This assessment was laid by law, which was as good a law as others, for all the reflections. You sit here to do justice to the nation in general. And, seeing the

assessment was justly laid, it is but just you should abate it, seeing you have put your negative upon that law, which said it ought to be laid so as no place should be privileged nor persons.

Mr. Young. The city must needs presume, if the Inns of Court ought not to pay it they would dispute it. The city must therefore pay it. The commonwealth must not lose it.

Lord Lambert. I know no remedy but the city must pay this assessment, for it is so, all counties over, and in all cities and places, where taxes are laid upon people unable to pay. The assessment must be made up.

The Master of the Rolls. I have some tenements in the city, and do pay 12*l.* out of 18*l.* They are sure to use strangers like strangers. I desire they may pay this assessment.

Sir Christopher Pack. This gentleman is mistaken mightily. I am sure the city do not, nor cannot, assess at any such unreasonable rates. They have a constant rule to go by; never above fourpence per pound for every month; so it is impossible to be as is said.

Mr. Fowell. It is most just and reasonable that this assessment should lie upon the city. If you abate it now, they will lay it somewhere where it should not be laid. I desire it may be laid back again upon the city.

Resolved, that the 2325*l.* be charged back again upon the city of London.

Third Article, Upon the 2517*l.* and odd, upon the officers.

Captain Baynes. Offices of profit are assessed both in the City and in Middlesex; and that which the Committee has done, is to regulate where the offices shall be liable.

Mr. Robinson. It is most reasonable where the profit of the office arises, that there it should be charged. This was debated in the Long Parliament.

Mr. Baron Parker. I understand not the question. It seems you lay it upon the places, and not upon the persons; whereas an office is a transitory thing, and follows the person.

Resolved, that the Committee be agreed withal, in this clause.

Resolved, to agree with the Committee in the fourth arti-

cle, as to the remitting of 6685*l.* and odd, to the city, pardoned by the Act of Oblivion, provided that the remainder of the said arrear be paid to the treasurers at war, on or before the 25th of March next.

Captain Baynes delivered the Excise Bill, to be read on Thursday.

Per Colonel Whetham and *Dr. Clarges.*

Resolved, that the Bill for the Scotch Union be taken up on Friday next.

Per Sir John Reynolds and *Lord Deputy.*

Resolved, That the Bill for the Union of Ireland be taken up on Friday.

Lord Claypole proposed that Mr. Drake and Colonel Grosvenor be added to the Earl of Derby's commission, and Lord Richard, and Lord Claypoole, and Colonel Fitz-James.

Resolved, that these five be added to this Committee.

Colonel Holland. I desire you would call in the petitioners at the door. They are honest men, and ought not to be discouraged.

Lord Strickland and *Sir Gilbert Pickering.* Whatever the petition be, though it be concerning the Quakers, you must not let them go home without being heard.

Colonel Cooper. These petitioners have been desired to be heard, by two or three. I desire the petitioners may be called in.

Major-General Skippon. For any thing I understand by the petition, it may take you ten days longer. I desire you would not begin with it at this time of the day.

Mr. Robinson. You ought not to discourage petitions by judging them before hearing.

Major Audley. It is the right of the people of England to petition this House, and I perceive this petition comes not only from the people, but the good people of this nation.

Lord Lambert. I know none of the petitioners, but I perceive they are very honest men, and faithful to the interest all along. We ought not to forejudge the petition. I believe they are far from favouring of the Quakers. You may call them in, and take your own time for reading it.

Lord Whitlock. Receive it now, and read it to-morrow.

Colonel Sydenham. In the Long Parliament, and all Parliaments, petitions were ever granted, or passed off with all favour. It was said by a worthy knight, that it was an honour for a Parliament to be petitioned. I think it is our honour now. Let us call in the petitioners, I perceive they are very honest men. The least we can do is to hear them, not to prejudge the business.

Lord Chief Justice. The petitioners may come again to-morrow. The time of the day sticks with me; for, to receive the petition and not to read it, will be all one.

Mr. Pedley and *Mr. Westlake* proposed that the petition should be read on Monday next, which was the proper day for petitions. This was to put off the business.

Mr. Bond. It is a very improper time to offer any business after twelve o'clock, and against the orders of the House.

The Question being put, whether the petitioners should be called in or no, and, if that Question should be put or no, Mr. Barrington declared himself unsatisfied, and the House divided.

Colonel Sydenham and Colonel Clarke, Tellers. *Yeas*, 108, sate.

Mr. Barrington and Colonel Berkley, Tellers. *Noes*, 74, went out.

Upon the main Question being put, the House divided again.

Lord President and Lord Strickland, Tellers. *Yeas*, 91 went out.

Colonel Berkley and the Attorney-General, Tellers. *Noes*, 90, sate.

The petitioners were called in, to the number of thirty. One of them* made a short speech: "They are but a few in number that signed the petition; but such persons as have done very faithful service, and have honest hearts for you. They are not any countenancers of wicked persons, or desirous to indulge any offences that you declare to be so; no partakers of the crime: but upon the common account of liberty

* Mr. Joshua Sprigge. *Journals.*

found it upon our spirits to become petitioners to you in this thing, leaving it to God to direct you in it."

The Petition of divers peaceable and well-affected persons in and about the City of London, in the behalf of themselves and others.

The contents were to remit the remainder of punishment to be inflicted upon James Nayler, and leave him to Gospel remedies, as the proper way to reclaim.

Colonel Holland. The way to make the blessing of God upon a nation is to leave every man to the liberty of his conscience. The king sometimes published declarations to this purpose, that he would give liberty to tender consciences. If he had been ingenuous in it (as I believe he was not), I am confident we could not have stood two months before him. I say it again, it is the only means to make a nation blessed, to let every one have the free exercise of his conscience. I understand not any power the civil magistrate has to inflict censures, &c.

Mr. Downing. I should be glad to hear anything of James Nayler's change of mind or repentance. What then shall be the rise of your mercy. You have debated this ten days, very solemnly, before God, angels, and men. I have heard nothing from the divines as to what good they have done of him. I was one of those that voted for his smaller punishment. I confess I was not clear about the boring him through the tongue and branding him; but if it had gone higher, I should now have been very well satisfied, since no better effect is wrought upon the person than has been. That text works much with me, which is in *Hebrews* x. 28.* This scripture is a quotation out of *Deut.* xxxii. 35. There he speaks altogether of vengeance which God executed by man. We are God's executioners, and ought to be tender of his honour. Can any man call this liberty of conscience, a permission to commit such high blasphemy and impiety. Are these your honest men, that petition for a horrid blasphemer, an imposter, and a seducer? Consider what vote you have

* "He that despised Moses's law, died without mercy, under two or three witnesses."

passed; and how, in honour, you can recede from it. Had you anything from himself, of recantation, it were something. But, as the case is, if ten thousand should come to the door and petition, I would die upon the place before I would remit the sentence you have already passed.

Lord Lambert. It is not the number of petitioners that should work with you. I speak not of the person before you; but of the petitioners. I know few of them, but I understand them to be very honest, godly persons, who, I am confident, disown the crime; yet think themselves obliged to bear their testimony for their liberty, &c.

Mr. Bampfield. I move you, that, by the orders of your House, this petition ought to be rejected. No man ought, without leave, to speak against our votes: it is expressly against your orders. Though you have received the petition, as not knowing the contents, yet now you are possessed of them, you are to proceed according to your orders, not to suffer any man to speak without asking leave. For that very reason, I desire it may be rejected. I shall speak nothing to the merits of the petition. I cannot but wonder at the impudence of some to dare to misinform this House. I know it was untrue, what was confidently affirmed here, concerning Nayler's being so indisposed on Saturday last.

Lord-Chief-Justice. The thing is very considerable to be debated, and not to be taken up at this time of the day. I desire you would adjourn this debate till to-morrow morning. I presume that gentleman thinks not we are tied up, not to speak against a law now in force, much more against a vote.

Major-General Skippon. Unless it be to check the petitioners, I know not why you should admit this debate. To talk of liberty of conscience, upon such an account as this, so dishonourable to God and this House. I was always of opinion in the Long Parliament, the more liberty the greater mischief. I shall speak nothing as to the merit of the business. It is dull enough. I speak it, as I shall answer it, before God; and as I shall discharge my conscience before him and man, by voting that the petition be rejected.

Colonel Sydenham. It were the greatest oppression and

restraint to the people that ever was, to stop the mouths of petitioners, though against your vote and judgment, if they find a grievance in it. I desire the debate may be adjourned, till to-morrow. I shall speak nothing to the merits of the cause.

Mr. Highland. I hope the people may petition against any of your laws, much more against your vote, which they find to be grievous. Haply, you may lay a higher, it may be, a lower, punishment upon him. It is the common right of Englishmen to petition against grievances in general.

Colonel Mathews. The proper question is, whether you will alter the judgment and votes of the House, or no. I desire you would not enter into further debate, but put the Question to reject it.

Major-General Boteler. It is against the orders of the House to admit of any debates after a judgment is passed. I knew before what the petition was, and therefore was against it. Now I am up, I shall speak to the merit of the case. (But he was called down.)

Mr. Moody. The proper question is, to reject the petition.

Mr. Attorney-General. This business is far differing from complaints against a law. It was never orderly to admit this to a debate, to alter your judgment or vote, without leave. We ought not to fetch more power from without, than we have within. If any member knew the petition, he ought to have asked leave.

Lord Whitlock. It is clear to me, for all that is said to the contrary, that any member may speak against any law or vote that the Parliament has made; if, upon experience, it be found that it is a grievance. But I would have you adjourn.

Lord Strickland. I never knew it before, but that after a petition was received and read in the House, every member might have leave to speak for or against it; yet I desire that you would adjourn this debate till to-morrow.

Lord Fiennes. Rise for the present, in regard you are not likely to come to any Question, and if to-morrow any

member has a mind to speak to the rejecting or continuing this petition, he may.

Mr. Westlake. I see nothing in the petition that deserves any debate. It relates nothing at all to James Nayler, for Colonel Holland says he continues still obdurate. He proposed to reject the petition.

Lord Deputy. I have something to offer to you, as my own thoughts, on these proceedings. You are not an authority, of yourselves, but you ought to have had his Highness's concurrence in it. Pardon me, it is not to lessen your judicature, but by the Instrument I am unsatisfied. I desire that this business may be put off till to-morrow, or rise without a question.

Sir Thomas Wroth. Rise without a question, and come to this debate when better refreshed.

Mr. Bond and *Major-General Boteler.* The proper question is to reject this petition.

Sir William Strickland. It is sunshine makes these horrid things grow. I wish they were not tolerated. I doubt it is impunity principally makes impiety of this kind. I was not satisfied as to the passing sentence of death upon this person; but, as it falls out, by his continuing so obdurate, if the punishment had been higher, it might, haply, have wrought better effect. Could I understand any thing, either from James Nayler or the ministers, that he is a new man, I could say something; but I am for the rejecting this petition.

Captain Baynes. Rise without a question, and see what becomes of the divines going to him, whether any reformation is wrought upon him or no.

Major-General Disbrowe and *Sir Gilbert Pickering.* Adjourn till to-morrow at eight, for I have several things to say to you in this business, which, I hope, may be for the service of the people of England. I have much upon me to speak to it. To reject the petition, would not effect any thing at all; for the members will be upon you every day.

Mr. Ashe, jun. The proper question is, whether the petition shall be rejected. I desire that may be your question.

Mr. Godfrey. Rise without a question, for you are not likely to come to any question, till further debate.

Mr. Bedford. You ought first to resolve, whether you will give leave to speak against your vote or no.

Mr. Attorney-General. Your best way is to rise without a question.

The sense of the House inclining this way, being weary of it; the Speaker left the chair without a question.

This afternoon, and till after eight, we were at the Committee of Trade, arguing the great case upon the petition of the cloth-workers, whereof Mr. Highmore was against the merchant-adventurers. After long debate, we were out-voted by the merchant-adventurers' party, though, it was clear to me, the vote was hard to the cloth-workers and the general wealth of the nation; * so that, unless we recover it on Thursday next, in the business of free-trade, the poor cloth-workers may turn tankard-bearers, &c.

Votes for cloth-workers, 7: Mr. Disbrowe, Mr. West, Mr. Thomas, Mr. Collins, Mr. Bodurda, Mr. ———,† and Mr. Burton; in all seven.

Votes for merchant-adventurers, 9: Sir Christopher Pack, Alderman Foot, Mr. Rolle, Mr. Moody, Mr. Noel, Colonel Mathews, Mr. Lloyd, Mr. Pickering, and Mr. ———, † in all nine; [doubtful Mr. Downing].

Wednesday, December 24, 1656.

An Act for naturalizing of Lewis du Moulin, doctor of physic,‡ and others, read three times together: such as I have not known before.

* See *supra*, p. 115—117.

† Blank in MS.

‡ He held now, and till the Restoration, the office of Camden's Professor of History at Oxford. During this year (1656) he had published a Latin work, entitled *Parænesis,* designed to controvert the presbyterian assumption of ecclesiastical authority. *Wood* says, that "it was the opinion then of some eminent and judicious persons, that the said book

Resolved to pass for a law, and that his Highness's consent be desired thereunto.

Sir William Strickland reported the amendments from the Committee, to whom the Bill was referred for settling upon Judge-Advocate Whalley, and Mr. Erasmus Smith, lands in Ireland, fallen to them by lot as adventurers there. Lord Ardes's and Lord Glainboise's lands were fallen by lot to the said adventurers; * but the Committee reported that other lands are set out in lieu of those lands.

Major-General Disbrowe and *Lord Lambert* proposed that they be set out by any three or more of his Highness's council, whereof the Lord Deputy to be one.

Mr. Robinson. The amendments are quite otherwise than the Bill. It is a matter of great concernment. Here are 9000 acres, English measure, settled upon them; for Irish measures are double, and you leave it to them to make their election. Surely they will not chuse the worst. If you give such large exhibitions, I doubt you will find some fall short; they that come last. Other public debts are to be satisfied out of Irish lands. I would have these gentlemen performed with to a penny; but I would have no more given them than is their contract. I like not those general terms, "all other advantages." I desire it should either be recommitted, or put in more particular terms. Here are 5000 Irish acres.

Sir William Strickland. I hope it is put into the hands of such persons as will be very faithful to you, in seeing that no more be set out than is due.

Colonel Jones. By the orders of the House, the member concerned ought to withdraw. You must be careful in the

did give a notable blow to those severe ones, of the Presbyterian way, who build a jurisdiction within a jurisdiction; and also that it did conduce to the uniting of all interests, rendering the magistrate his due, and stating the right of churches." This learned physician, whose published writings were numerous, though none of them medical, was son of the famous Peter du Moulin. His brother Peter, a clergyman of the Church of England, wrote in 1652, (though attributed to Alex. Morus) *Regii sanguinis clamor ad cœlum*, against Milton's *Pro Populo Anglicano Defensio.* See *Fasti Oxonienses*, 1635, 1649, and 1656.

* See *supra*, p. 2.

measure, for you may be much mistaken in that, for Irish acres are double others.

Mr. Attorney-General. Unless the member be accused of some crime, he need not withdraw. In such cases the member stands up in his seat, and makes his defence, and then is to withdraw.

Major-General Bridges. There is no such difference in the measure as is represented to you.

Major-General Goffe. Put all the amendments to the question together in the gross.

Resolved, that the lands be set out by three or more of the council, whereof the Lord-Deputy, or Chief-Governor of Ireland, to be one. Amendment upon amendment.

Captain Scotten. Seeing you have left out the house of Portumna,* I desire that you would assign them a house in Galloway.

Mr. Speaker pressed that a house should be assigned them.

Resolved, to agree with the Committee, in all these amendments.

Resolved, that this Bill be engrossed.

Sir Lislebone Long. Sir Thomas Viner,† and several other citizens are attending without, with a petition; I desire they may be called in.

Alderman Foot. I desire to second that motion, that the petitioners may be called in. It seems, it is a contrary petition to what came in yesterday.‡

Mr. Bampfield. An Act for raising of maintenance for a minister, at Newport, in the Isle of Wight. Read a first time.

Colonel Sydenham and *Sir William Strickland* proposed, that it might be read a second time, upon Friday next.

* Reserved, with 4,000 acres, for Lord Henry Cromwell. See *infra*.

† Alderman, who had been Lord Mayor in 1653. Sir Robert Viner, who filled that office in 1674, and whose familiarity with Charles II. and its consequences, are related in *The Spectator*, No. 462, was, probably, of the same family.

‡ See *supra*, p. 209, 215, 216.

Sir Edward Rhodes. I desire you will not appoint it on Friday; that is the day appointed for the Scotch business.

Mr. Attorney-General. It may be read in the morning, the first business.

Resolved, that this Bill be read a second time, on Friday.

Sir Christopher Pack proposed to call in the petitioners.

Mr. Speaker. I hope you intend to call in those noble citizens that wait at the door, as soon as this Bill is read.

Mr. Bampfield brought in another Bill to the same purpose, for Exeter; intitled, "An Act for promoting, and more frequent preaching of, the Gospel, and maintenance of ministers in the City of Exeter, and uniting of parishes and parish Churches within the said City of Exeter."

Mr. Speaker. Observe this Bill. It is of more concernment than the former. It is for the uniting of parishes, &c. Observe this clause: "The Mayor and Burgesses there, to have the Advowson of these places, for them and their successors for ever; and for settling all the Dean's and Dean and Chapter's lands adjoining."

Mr. Nathaniel Bacon, was glad to hear the House so zealous for providing a future maintenance for ministers, whilst others were taking it away; but desired it might be committed to fill up the blanks.

Resolved, that this Bill be read a second time, upon Wednesday.

Sir Thomas Viner, and about twenty more citizens, called in. They opened their petition: "A Petition of the President and Governors of the Corporation for the Poor of the City of London."

It was against the brokers'* buying of stolen goods, and not entering them.

Alderman Foot. In King James's time, a registry was settled for entry of all such goods, whereby many robberies and burglaries were discovered.

* Pawn-brokers, who appear to have borne an ill reputation long after this period. Thus *Arbuthnot,* on "Antient Coins," &c., published in 1727, says, "the usurers, or money-changers at Rome, seem to have been little better than our pawn-brokers."

Captain Baynes. The brokers do so grind the faces of the poor, by unreasonable exactions, sixty per cent. nay double, every year. This is not in the petition. I desire these may be considered.

Mr. Godfrey and *Dr. Clarges* proposed, that this might be taken into consideration; for it was a very great grievance; and that it might not only extend to the City, but to the liberties.

Mr. Church proposed, that it might extend all the nation over.

Major-General Kelsey proposed, not to clog the business.

Mr. Robinson. This brocage is a great grievance; but I know not how it will be remedied, unless you take away the livelihood of thousands of poor people. Though they pay exactious rates, both for the clothes and monies borrowed of the brokers; yet the poor people make it their subsistence. If you take that away, many will perish for want of sustenance. Instanced in oyster-women,* and the like.

Alderman Foot and *Sir Christopher Pack* said, that it ought to be referred to the Committee of Trade.

Major-General Kelsey. The way to lose the business is, to commit it thither. I desire it may rather be transferred to the Committee for the other petition of the city.

Colonel Mathews. I never knew any Committee dispatch business more cleverly than that Committee.

Resolved, that this petition be referred to the Committee of Trade.

Resolved, that the business of brocage be referred to the same Committee.

Captain Baynes. I believe it will be offered to the Committee how useful would be a small bank for the relief of poor people, upon pawns of this kind, so that these brokers will fall to the ground of course.

* These are celebrated in *Hudibras.*

"The *oyster-women* lock'd their fish up,
And trudg'd away, to cry, no Bishop."

Again, to assist in the fortification of London, the female citizens,

"From ladies down to *oyster-wenches,*
Labour'd like pioneers in trenches."

The Master of the Rolls and *Mr. Solicitor General.* This Corporation was settled in the Long Parliament; but none but freemen's children can be received.

I desire that the poor of the country giving monies with their children, may be received into this Corporation.

Mr. Robinson proposed to refer the Bill to this Committee to consider of the constitution of this Corporation.

Alderman Foot and *Mr. Recorder.* If we must receive the poor of the country, we must have more houses built.

Resolved, that it be referred to the same Committee to consider of a way for provision for the poor in the country.

Mr. Lister reported the amendments to the Bill for the probate of wills.*

1st Amendment. Salary of judges at 200*l.* per annum.

Resolved, to agree with the Committee in this amendment.

2d. That the clause for making it a Court of Record be left out.

3d. That all wills concerning lands shall be registered with the registrar.

Mr. Solicitor-General, Mr. Attorney-General and *Lord Chief-Justice,* were against the registering of such wills, for it would be the way to encourage forgery. Ecclesiastical courts never had cognisance of such wills. This concerns men's inheritances, which cannot be determined but by witnesses before a jury. That clause may very well be left out and the Bill stand.

Mr. Speaker. This is an independent clause, and may be left out without prejudice to the Bill. Make it thus, that where land is divised in the will, the Court may not keep the will.

Mr. Fowell. Lands passed by will, are not testimentary. I need not prove it unless I will.

Captain Baynes proposed to agree with the Committee.

The Master of the Rolls. The seal of the probate is good enough for the goods, and is evidence in any court, but for lands it cannot be evidence, and, therefore, the original will

* See *supra,* p. 8, *note.*‡

must remain in the devisee's hands. It may be any of our cases. No man knows who shall be first.

Mr. Robinson. This registering of wills, I fear me, will not be sufficient, unless you make it a Court of Record. I cannot be satisfied that the clause before you is enough for that purpose. I desire you would adjourn for the present, and debate it to-morrow morning.

Major-General Disbrowe, Lord-Chief Justice and *Major General Howard* proposed that it might be recommitted.

The Speaker offered to amend it at the chair.

Resolved, that this Bill be recommitted, and that all the gentlemen of the long robe may be added.

Per Mr. Pedley. Resolved, that the Report from the Committee for Rodney's petition be upon Wednesday next.

Per Lord Lambert. Resolved that the Bill for General Monk* be read a second time on Friday.

It was moved to have a Report from the Committee for Civil law on Wednesday, and the question being put, Mr. Speaker declared the affirmative, but Mr. Robinson stood up and was unsatisfied. The House divided but it was yielded, and

Resolved, that the Report from the Committee for the Civil Law be brought in on Wednesday next.

Resolved, to add several members to several Committees.

I was this afternoon with Captain Lister's Committee in the Inner Court of Wards; who only ordered Serjeant Maynard to be sent for, and adjourned till Friday at three.

In the same place sat the Committee for the citizens' petition.

In the Speaker's chamber, Major-General Howard, Mr. Briscoe, Mr. Fenwick, and I, at a sub-Committee for the Borders.†

In the same place, upon a sub-Committee, where Mr West had the chair, to examine Mr. Thomas Duckett about the probability of his project for the new way of tanning and

* He was now residing at Dalkeith House as Commander-in-chief for Scotland. This Bill was for a grant of lands. See *infra*.

† See *supra*, p. 12 *note* *.

dressing leather, and improving of lands, according to some proposals before the Committee of Trade. The Committee approved of his ways in many particulars.

Thursday, December 25, 1656.

A Bill for the settling the holding of the Sheriff's Court for the County of Wilts, to be kept at the Devizes was this day read the second time.

Resolved, that this Bill be referred to a Committee, &c.

Major-General Disbrowe reported amendments to the Bill for the Forest of Deane, and mitigation of the laws, &c.*

Mr. Robinson. I am against the re-foresting of it. It is to turn the people of England into wild beasts. It is too long time to keep the commoners out, 12 years, till the woods be grown up. We promised Englishmen freedom, equal freedom. If this was actually de-forested, let not us re-forest it. Did we not make the people believe that we fought for their liberty. Let us not deceive them of their expectation. Is it not by their hands and successes that our interest remains; that we sit here? Let us not forget it, lest we be laid aside ourselves, upon the same account that former powers were laid aside. I desire this Bill may not be ingrossed.

Major-General Disbrowe. This gentleman assigns no inconvenience particularly to the people by this Bill. It is not to turn men into wild beasts, or to make wild beasts men; but to make wild men tame men; to restrain extravagancies in destroying the timber. It takes away the rigour of the forest law. I believe it will not be denied but a justice-seat in a forest, is law: else it had not been continued in those peeping times, when it would have been strictly looked to, to set up any jurisdiction contrary to law. It gives the people more liberty than they have had these hundred years. They expect no benefit by these eighteen thousand acres, but think

* See *supra*, p. 37.

themselves wholly excluded; but this, after a time, restores the commoner's right.

Colonel Mathews. I am against this Bill. It ought to be well considered. Provide what you will for timber, not only there, but in general; but I would have us careful of ushering in former oppressions and extravagancies. Those were very strict, and tended to depopulation. I am against receiving any thing like the former forest laws. I desire it may not be ingrossed.

Resolved, that this Bill be ingrossed; but two *Noes.*

Resolved, that Mr. Bedford have leave to go into the country. He has a sick child.

Major-General Disbrowe stood up, but the orders of the day were called for.

Colonel Mathews. The House is thin; much, I believe, occasioned by observation of this day. I have a short Bill to prevent the superstition for the future. I desire it to be read.

Mr. Robinson. I could get no rest all night for the preparation of this foolish day's solemnity. This renders us, in the eyes of the people, to be profane. We are, I doubt, returning to Popery.

Sir William Strickland. It is a very fit time to offer the Bill, this day, to bear your testimony against it, since people observe it with more solemnity than they do the Lord's-day. I desire it may be read.

Major-General Kelsey and *Major Morgan.* If this had been ten days since, it might have been in good time; but let not this business jostle out great and eminent business, you having a twelve-months' time to provide this law. It is too late now to make a law against it.

Major-General Packer, Major Audley, and *Sir Gilbert Pickering.* If ever bill was well timed this bill is. You see how the people keep up these superstitious observations to your face; stricter, in many places, than they do the Lord's-day. One may pass from the Tower to Westminster and not a shop open, nor a creature stirring. It is a fit time now.

They desired it might be read.

Mr. Godfrey. If this Bill had not been moved to be read, I should not have pressed it; but seeing you have admitted it to a debate, and at this time, I hope we shall all witness against it: otherwise it will be said abroad that these superstitious days have favourites in this House.

An Act for abolishing and taking away festivals, commonly called holydays. Read the first time.

Sir William Strickland proposed that it might be read the second time to-morrow.

Colonel Hewitson seconded that motion.

Sir Christopher Pack. I am as much for this Bill as any man, but I would not have us, under the notion of taking away festivals, take away the Lord's-day, for in the Bill the festival of Easter and Pentecost are abolished. Yet this Bill may be made good by the commitment. I desire it may be committed

Major-General Disbrowe. I have a short Bill to offer you, for continuance of a tax upon some people, for the maintenance of the militia. It will be for the security of your peace. It can fall upon no persons so fitly as those that occasion the charge. Let us lay the saddle upon the right horse. Your friends and enemies have hitherto borne an equal share. There ought to be a discrimination; for if your enemies should have prevailed, they would have freed themselves.

Mr. Bond. It is not wisdom for you to give leave to any person to bring in a Bill to lay any charge upon the people, till you have gone through with what you have under consideration concerning it. The gentleman offers it very properly to ask your leave, but I hope you will not give it.

Mr. Robinson. This motion is very properly offered. The Cavaliers are the cause of this war,* considering how near they are a kin to the Spaniard. You protect them. They do not protect you. They keep together, waiting an opportunity to supplant you. In the late insurrections few of that party but had a younger brother, or some relation engaged in the plot, at that time, in every family, especially in the North parts.

* With Spain. See *supra*, p. 10, *note*.

This may be demonstrated to you at the Committee. I confess, when the declaration came out, I could not believe the rising was within three miles of me. Till I saw the arms* I could not credit it. There were ridings in the night from East to North, to South, &c. Sir Richard Maleverer, before Lord Wilmot came, rode from family to family. They met under pretence of huntings and the like. I believe hardly a family in the North——† I know what it was in the South. But they had correspondency in the plot. I took some examination as a justice of peace, before other authority came out.

Lord Wilmot lay three nights at Sir William Ingram's, and solicited people very strongly, and threatened some. Lord Wilmot, when he went to Hessam-moor, expected 4,000 in arms there, with a design upon York; but he said some had deceived them. Wilmot being the wisest man amongst them, would not have come in upon slender grounds. He fully stinted to have been in York that night, rifling such a man's bags. The design was universally known amongst them. I am satisfied.‡

It is equal, that they that occasion the trouble should bear the burthen of it. They are your only enemies.

* "A cartload of arms," says *Ludlow,* "was conveyed to the place of rendezvous agreed upon for the Northern parts, where it was reported the contrivers of this design were to be headed by the Lord Wilmot. But receiving some alarm upon their first meeting—they dispersed themselves, and left their arms behind them." *Memoirs,* (1698), ii. 515.

† Here some words omitted in the MS.

‡ "The Royalists," says Mrs. Macaulay, "whose hopes for a restoration of regal tyranny in the Stewart family, had considerably revived on the destruction of the Republican Government, encouraged by the dissatisfaction of all parties, entered into a general conspiracy. The 18th of April, (1655), was the day appointed for the rising. Sir Thomas Harris was to head a party in Shropshire; Sir Thomas Middleton in Wales; Sir Henry Slingsby and Sir Richard Maleverer in Yorkshire; Sir Joseph Wagstaff and Colonel Penruddock in Wiltshire; Sir Hugh Pollard in Devonshire; and Mr. Arundell, in Cornwall. London was full of conspirators. General Massey was lurking about Bristol; and Wilmot, who had assumed the title of Earl of Rochester, in the metropolis.

"Before the arrival of the day intended for rising, some of the conspirators were thrown by the usurper into prison. The greater number

But you will say the Act of Oblivion* is against it.

I wish it had been reciprocally kept on their part. How many of that party have declared for you? Haply not above two or three in a country. They wait all occasions to overthrow you, and close with any design to destroy. Will you make no distinction between your friends and your enemies? What witness have they borne for you. How have they declared against their own interest? Do they not keep Charles Stewart's interest warm still amongst them; agents and letters amongst them? What public declaration have they made against that party?

The Act of Oblivion was for all the party. It did not pardon any individual person. The compact was made with the body, the party; not one by one.

I appeal to some gentlemen here, and without too, if that Act was not drawn by the consultation and counsel of the Cavalier party. I was against it at the first. We needed rather an Act of Commemoration. The honest party look upon it as a great favour, that there is a distinction made, a character set upon him, that you may know a Cavalier from a Roundhead. I may haply be unsatisfied as well as other men, but I believe it as much my Lord Protector's interest as any thing.

If you bear your witness to that distinction, it will encourage your friends, though it be but a small tax. They grow fat and live at home;—we decrease; they increase. I should be sorry to see your strength discouraged by your own friends, and build up an army of Cavaliers, of untempered mortar, that will not consist with your interest. Most certain if the power were in their hands, they would spare their friends, and lay it upon us. Though I was least believing or sensible of the plot, yet it was within three miles of me; and I am sure my throat had been cut in the first place. It is but just they should feel it.

Major-General Jephson. This gentleman has given you a large narration of the late insurrection, more particularly, I

of the rest, terrified by the danger of the undertaking, remained quiet at home. In the West alone, the conspiracy broke out into action." *History of England,* (1772), v. 145, 146. See *Parl. Hist.* xx. 131.

* An Act "of general pardon and oblivion" passed in 1657.

confess, than I have heard before; and, certainly, those honourable persons that laid the tax, know more of the particulars. He has told you much of the *utile*, but not a word of the *honestum*, which the philosopher said were to be concomitants. I shall speak nothing against the Bill as to the merit of it. You may bring one in; but I would first have you consider how it will stand with your honour to admit an act against an act. First, let a day be appointed to consider of repealing all or part of the former Act of Parliament, and then give way, to read this Bill. But I doubt it will hardly be for your honour to break the faith of a Parliament. If it appear that any of them have been really in the plot, let them not pay part, but all.

Colonel Sydenham. It is not so much against morality and honesty as this gentleman speaks of. It is well enough known what plots were laid; how implacable and inveterate that party are against you; how they separate themselves to this day. They have not relinquished their party; not one of them declared against Charles Stewart. The tax was laid upon good consideration, and I hope this Parliament will never think it unreasonable to continue it.

The Master of the Rolls. Till there be a further debate upon the grounds of this tax, before the Bill be brought in, for order's sake I would have you debate the particulars, how and upon whom this tax must be laid. If any, since the Act of Oblivion, have acted or plotted any thing against the public peace, let them suffer severely; but it is not for the honour of a Parliament to break the faith of Parliaments. Never was an Act of Oblivion violated by a Parliament in any age of the world.

Sir Gilbert Pickering. I believe few within these walls but have seen declarations of this business at large, as full as tongue or pen can express it. If it be not honest, I pray God it may not be done; but I doubt it will appear both before God and man, that it is but too honest and just, too apparent cause to lay this tax. They keep their interest up in a body. Your friends are sure to hear of their malice, when they can have power to exercise it. It is implacable, and irreconcileable to our interest, till time out-date it.

Lord Whitlock. You are not ripe for a question, to lay a tax upon the people, upon a bare motion, without further debate. I do believe, with those gentlemen that have spoken, that there is an inveterate hate of that party against us. Some other way, haply, may be found out to restrain them. There was never any act of oblivion, or any part of it broken by a Parliament. It is of dangerous consequence. The way has been, first to debate the grounds and reasons of a tax before it be laid, and that in a Grand Committee; but not so seasonable to bring in a Bill now. I shall humbly move that a day shall be appointed.

Colonel Holland. I always observed that the rule of all Commonwealths was *salus populi suprema lex.* Anciently it was the rule held forth in our Commonwealth. In the Long Parliament, this Act of Oblivion was highly debated. For my part, I was utterly against it, as foreseeing the Cavaliers were a party not to be obliged by it. I know the Act was drawn and driven on by the counsel and advice of that party. This plot was universally contrived by them.

Mr. Speaker. In all taxes that I ever knew, the *quantum* and *quo modo* were first propounded. It was so in the tax of 4000*l.* upon the northern contribution. It is not worthy of the House to give directions to bring in a Bill for laying a tax, till you first understand what, and upon whom, it must be laid; which ought to be debated first in a Grand Committee.

Lord Lambert. By orders of the House, as I understand them, no bill can be brought in with a *quantum*, but always with a blank. It is talked of a debate in a Grand Committee. Must every Bill pass a Grand Committee before it is read in the House. Here is a contradiction in the orders. In a business of this nature, that concerns the safety of the Commonwealth, we should go the nearest way. But if it be thought fit to debate it first in a Grand Committee, I shall not be against it; that every thing may be weighed to the full, and, if it be not both *bonum* and *utile,* I shall not be for it.

Mr. Godfrey. It is not a proper season, the House being so thin. I would have it suspended till the House be called,

for it is fit before a tax be laid upon all, or any part of the people, that it should be first freely debated in a Grand Committee. I shall say nothing to the merit of the thing, but to the orders of your proceedings. A matter of this nature ought certainly to undergo a serious consideration, and to agree of the *quantum* and *quo modo*, before the Bill be brought in.

Mr. Speaker. I hear many call for a question. I understand no particulars. I must put a general question, whether liberty shall be given to bring in a Bill for laying a tax for maintenance of the forces.

Lord-Chief-Justice. The gentlemen moved, very properly, for leave to bring in a Bill. But I never knew any Bill received to lay any tax, till it was first debated in the particulars; as how many subsidies or fifteenths. The matters were always debated, very leisurely, and in a full House. The motion is very general, to charge some persons, not knowing who, nor how. This ought to have a full debate. You ought to ascertain the thing. If it be for decimation, or the like, to ascertain upon what persons it must lie. Let a day be appointed, that all may know of it; as this day sennight. I shall not be against the Bill. But it is fit for our honour that serve here for the nation, to do things regularly and fairly.

Major-General Whalley. I wonder to hear that honourable person speak to put it off for a sennight. I shall not pretend much to understand the orders of the House. This is not to lay a tax upon all the people, but only upon such a party as have been active, and are yet active against you; such as are now decimated.* It is not upon all that party; not upon them that have laid down their arms, and lived peaceably; or have given signal testimony of their affection to you. I know no reason why you should defer this business, to make so long a debate.

* In 1655, an ordinance had been passed by the Protector and his Council, "levying a tenth of their estates," on "the Cavalier Party," to maintain the forces. To levy this tax, was one principal reason for the appointment of *Major-Generals* in all the counties.—See *Parl. Hist.* xx. 433.

Colonel Hewitson. * You are not laying a tax upon the people, but upon your enemies, whose estates are at the devotion of your enemies. They are active people, whom they well employ to your destruction. I grant the Act of Oblivion is a sacred thing, and your public faith ought to be kept; but I hope you only pardon offences, not what is to come. If they have digged pits or laid snares since, against the honest party, that you will not be asleep, but look about you. You are disobliged from the Act of Oblivion. I desire that a Bill may be brought in, to lay an assessment upon the Cavaliers.

Major-General Packer. Your Question should be, to lay a tax upon all that have been sequestered; or aided, assisted, or abetted, the late King's party.

Colonel Holland proposed, that the tax might be laid upon all that have been sequestered for acting, abetting, or adhering to the late war against the Parliament.

Colonel Jones. The plainer your question is, the better; for the intent is to confirm what is past, and what is to come, as to continuing the charge of decimation. I am for a day to be appointed to debate this business fully, and that the honourable persons of the Council may give you satisfaction, upon what terms, grounds, and reasons, the tax was laid upon that party, that the justice and honesty of the business may be debated.

Mr. Reynell proposed, that for all men's satisfaction, a day might be appointed to debate the justice, right, and reason of the business. It is fit we should as well have a regard to the *honestum* and *justum* as to the *utile* and *tutum*. If the Cavaliers be never so wicked, let us be just to them, and keep our faith. I never heard that a Parliament did ever violate or repeal an Act of Oblivion.

Major-General Disbrowe. I offer a question more general, not to include all persons sequestered, or have been aiding, &c. Some have given testimony of their affection to you, both before and since the decimation. It is known upon whom it is aimed to lay the tax, so that you may put your question more generally. It is far from me to offer to

lay a tax upon any of them that either have, or shall come into a cheerful compliance with us, and disclaiming their party. It is their reformation, not their ruin, is desired. If they become our friends, let them benefit by their change.

Mr. Moody. Express whom you mean, by that party you will lay the tax upon. It is good we know it.

Lord-Chief-Justice. Appoint Tuesday next to debate this business, for it ought to be seriously weighed how far this Act shall extend, and the *quantum* and *quo modo*, which is the regular way in all such matters.

Colonel Purefoy. Appoint to-morrow morning to debate this business, lest you lose your time.

Mr. Trevor. It will be better to debate, whether it will be fit to bring in the Bill first, rather than after the Bill is brought in, to reject it. It may be to-morrow morning, if you please.

Mr. Secretary. I have known precedents both ways, as to what is urged, for or against the debating; whether leave should be given to bring in a Bill to tax the nation or no. Your danger of delaying it is not so far off, haply, as some think. I desire the question may be put, to lay the tax upon all such as have been sequestered for delinquency, or have aided, assisted, &c. with such exceptions, &c.

Mr. Butler. What will be said without doors, that you have had a debate upon this business, whether a Bill shall be brought in or no, and you have done nothing in it. I desire you would put the Question, whether a tax Bill shall be brought in to lay a tax upon the Cavaliers, with some proviso and limitations, as the Parliament shall agree on.

Mr. Bampfield. This question will wholly determine your debate upon the force of the Act of Oblivion. If I were satisfied in my conscience, that this tax could be laid without a violation of the Act, without breach of your faith, I should not say a word on it. I have as little to plead for the Cavaliers as any man. I believe some are as bad as can be. Admit they be as bad as can be, we ought to be honest to them. I hope we shall not take up that principle, *fides cum*

hereticis, &c.; our faith is at stake. It was told you Acts of Oblivion were never broken in Parliament.

Admit some have been actually in the insurrection against us: but to draw the whole party under punishment for the offence of some, is a justice that I cannot understand. I remember what a very sober person said of this business. While the general tax continued they had no justice against us, but now God will plead for them, in regard we have violated those rules, and exceeded that square of justice, which ought to bound all men.

In *Samuel* xxi. 1, we read that there was a great famine for three years. The reason being inquired, it was because Saul "slew the Gibeonites." This may run parallel with the case of the Cavaliers. There was deceit used to gain that league. More so is the Cavaliers' case.

The benefit of the Act of Oblivion was reciprocal. It tended to the quieting of men's spirits upon the change of the government. We had advantage by it as well as they. In the Gibeonites' case no removing of the judgment, till justice was done upon Saul's sons. They increased, and Saul in great prudence slew them, in zeal to the house of Israel, in regard of their enmity, and increase of them; but we find God of another mind. If we keep to our promise, our greatest safety is to keep faith. It is God's rule; David's precept. Most honest to keep the public faith to those that have not actually broke that faith. I have heard that it was Machiavel's policy to place honesty only in safety,* but God's rules are otherwise. Let us pursue those and we may expect a blessing. Otherwise, God will punish us as he did Saul's sons. It is best to deal plainly with God in those things. I hope this Parliament will never think fit to exceed those rules. We are upon a sure foundation if that be done.

* Referring, I apprehend, to the maxims of government recommended in his *Prince*, though ironically, as Machiavel maintained in his *Vindication*, (1537). That piece was brought from Italy, in 1645, by Henry Neville, author of *Plato Redivivus*. See his translation in "Harleian Miscellany," (1808), i. 78; "Pillars of Priestcraft," (1768), iv. 245.

Lord Strickland. I speak not that you should break your public faith, but there must be a reciprocation. I do not find in Scripture that we ought to pardon offences to come.

When Ravaillac slew Henry IV., all the Jesuits were banished, whereas but one was guilty.* The like was done against them by the Venetians, when the war broke out by their plot.†

If there were not some justice to build your Act upon, I should not speak for it. I am for the preservation of your faith.

The Papists have as much, nay more, to say against the tax laid upon them.‡

You have a civil quarrel with the Cavaliers, and the question is, whether you will maintain it out of your own purses, or your enemies'. I am sure they are the sole occasion, both of your foreign and intestine broils, and it is but reasonable they should bear the burthen. They are very irreconcileable.

Mr. Bedford. The bringing in a Bill does not give the question away, upon the public faith of the nation. It rather opens a way for the debate of it. I am not of their principle, who say *quicquid tutum, est honestum.* I hope it will appear to be *honestum* to lay this tax upon these people without

* It was *Châtel,* a Jesuit, who attempted the life of Henry IV. in 1594, on whose account his society was banished; while the designed assassin was visited with the following dreadful punishment. "After having been put to the ordinary and extraordinary trial upon the rack, and having made the *amende honorable,* his hand was cut off, holding in it the murderous knife with which he intended to kill the king: then his flesh was torn off with red-hot pincers, and he was drawn between four horses in the Place de Grève, his body and members cast into the fire, and burnt to ashes, and the ashes thrown into the air."

In 1603 the Jesuits were restored, and the king chose Father Coton, one of their order, as his confessor. On Henry's assassination by *Ravaillac,* in 1610, though he was not one of their order, they incurred some suspicions; yet maintained their establishment. See *Perefixe's Henri IV., Anno* 1594, and *Mémoires de Sully,* B. vii.; *Henault's Abrégé Chronologique* (1789), ii. 601, 615.

† They were re-established at Venice in 1657, at the instance of Louis XIV. See *Henault,* ii. 757.

‡ See *supra,* p. 8, *note* †.

breach of your faith. I was very well satisfied to act in the laying of this extraordinary tax. I know your friends were much satisfied that you put that distinction. If a Bill be brought in, it will make way for every man to speak his conscience; which may be done in a Grand Committee upon the Bill committed, as well as if it were debated beforehand. I cannot understand the necessity of debating it in a Grand Committee first. I have observed the orders of this House to be otherwise. I desire the question may be put to give leave to bring in a Bill.

Sir John Hobart. If I had been satisfied that this tax might be laid without a breach of your faith, I should not have risen up to trouble you. I would have the question plainly put, whether the Act of Oblivion be taken away. If you punish men, it must either have a retrospect beyond the Act of Oblivion for some offence committed before. If any offence be committed since, and proved, I am so great an enemy to your enemies, that I would not only have a part, but all taken away. Let us have a prospect as well to the honour of a Parliament and the liberty of Englishmen, as to the safety of the nation. I have an equal respect to all, but let us do things that are just and honest. Must we confirm all that passed, or continue that tax upon them without examining the merits. I would have a day appointed, that we may plainly and clearly debate the business.

Lord Lambert. I am as guilty of the Act of Oblivion as any man. I have laboured to oblige that party; to win them, as much as may be; but find it impossible till time wear out the memory. They are as careful to breed up their children in the memory of the quarrel as can be. They are, haply, now merry over their Christmas pies, drinking the King of Scots' health, or your confusion. The Gibeonites' case is not at all parallel with this. I never read that they made any insurrection against Israel, or disturbed the peace, or you had found them otherwise dealt with. If the Act of Oblivion was not reciprocal, and they be not tied to keep their part as well as we, it is an ill bargain for us. They were actually in arms in all parts of the nation. *Salus populi su-*

prema lex. I hope you will have a special care to be serious in this thing. I could say much in it, if it were proper to speak to it now. They are a party not to be slighted. They may do you more mischief than you, haply, are aware of. I desire leave may be given to bring in a Bill.

Mr. Fowell. I am as much against the Cavaliers as any man within these walls. I believe there was a necessity for laying the decimation, and haply, I shall give my vote to continue it. *Quod necessitas cogit*, &c., but I would have us be as unanimous in the thing as can be; but if you put the question to bring in the Bill, you will divide. I desire you would rather appoint a day to debate it. It is a begging of the question, and implicitly dispensing with the Act of Oblivion, with the faith of Parliaments, which ought to be preserved.

Colonel Clarke. It encroacheth not at all upon the Act of Oblivion. I desire the Bill may be appointed to be read.

Lord Lisle. It doth not conclude the Act of Oblivion. If I thought so, I should be against it; but it is the intention to ease our friends, and lay it upon our enemies. Appoint a short day for reading the Bill, that the honesty and justice of the business might be fully debated.

Mr. Godfrey stood up, but *Lord Lambert* said he had spoke, but desired he might be heard again. *Mr. Highland* called him down again.

Mr. Godfrey. I should not trouble you if I were not clearly satisfied that by this *salvo* to the Act of Oblivion, you wholly run the faith of the nation upon a rock. I know it is the care of every man here to tender the faith of the nation. It may be broken, as well by a vote as by a law. You vote expressly that a Bill should be brought in on that plan, but you say with such restrictions as the Parliament shall agree. If you agree upon any restriction, your order, your vote, stands *de facto*. The Bill must be received.

I desire a vote may not pass so general, not knowing what may be the fruits of it. I would have you appoint a day to debate it at large, whether it be just or honest to lay such a tax, considering your faith, which you ought to have a

special respect for. It is told you, how the faith of a Parliament was never broken, in any age of the world.*

Mr. Puller. I would not have you put the question so hastily. There is no necessity, at present, for it. This tax is already upon them, upon whom you would lay it. I desire it may not be read till the House be full, that all men may speak their conscience.

Lord Fiennes. I think *jus non est violandum*, upon any terms; but I understand not how this question will intrench upon your public faith. There are other reasons why this tax should be laid more upon them than upon others. They are exempted from public employments, and are at no other charge. You have eased or charged some men more than others. It is frequent, and I am clear that this Bill may be brought in without debating it in a Grand Committee before hand.

Mr. Hussey. It is very late to put this question now. I desire you would put it off till Thursday, that the House may be full.

Mr. Bodurda. I shall heartily concur with the laying this tax, if it be just, or appear to be so. If you intend not to encroach upon the public faith, I wish it were so expressed. It is a matter of great consequence, and ought to have a serious debate, haply not so seasonable now. I desire something to be added to your question, viz. after you speak of the limitations and restrictions, with respect had to the public faith of the nation. But I could rather wish this debate might be adjourned.

Major-General Kelsey. I am not against keeping faith with the Cavaliers, so they keep faith with you. We are very tender of them. We are not so to our friends. They could never have indemnity, but are daily sued in all courts, for things done for your service. I desire the Bill may be brought in, and that you would then take a time to debate at large the profit and honesty and justice of the business; in the which I doubt not but a right understanding will be amongst us.

* See Mr. Reynell, *supra*, p. 236.

Sir Christopher Pack. Express in the question that the assessment should be laid upon them you intend, by the words, *and not upon others.*

Mr. Robinson proposed that it might be in the disjunctive, and not in the copulative; viz. "sequestered, or in actual arms.

The question being put whether the question to be put or no, the House was divided by Lord Claypoole.

Sir William Roberts and Mr. Hampden, Tellers, went out, 63. *Noes.*

Lord Commissioners Fiennes and Lisle, Tellers, sate, 86 *Yeas.*

The main question was then put; the House again divided.

Lord Eure and Mr. Brewster, Tellers, for *Yeas,* 88 went out.

Sir John Hobart and Mr. Grove,* Tellers, for *Noes,* 63 sate.

Resolved, that leave be given by the House to bring in a Bill of Assessments for the maintenance of the militia forces; the same to be laid upon such persons as have been in arms against the Parliament, or sequestered for their delinquency in the late wars, with due restrictions, exceptions, and provisos to be contained therein, for some persons and in some cases.

Resolved, that this Bill be brought in to-morrow morning.†

We sate till two o'clock, and had much ado to come to the question. It was, I believe, much against the Speaker's mind.

At the Committee of Trade was the business between the merchant adventurers and the free merchants to be heard; but in regard both parties were not prepared for a hearing, it was put off till Thursday next.

* Windham in the *Journals.*

† These two Resolutions are, *verbatim,* as in the *Journals.*

Friday, December 26, 1656.

Judge Lawrence came this day in, to serve for the Isle of Wight.

We stayed one hour in the House before Mr. Peters* came to pray with us.

Mr. Speaker. Here is a short Bill which concerns a member. I desire it may be read.

Colonel Sydenham. There is a Bill concerning augmentations, which was to be read the first time this day.

An Act for the establishing of divers lands in the counties of Dublin and Kildare, settled by letters patent upon John Blackwell,† his heirs, and assigns. Read the first time.

* The celebrated Hugh Peters, whose quaint exhibitions as a preacher, too much according to the bad taste of his age, have probably been oftener recollected than his conscientious adherence to the political cause he had espoused, his excellent dying advice to his daughter, and especially his heroic Christian fortitude in the immediate expectation of a horrible death. (See *State Trials*, ii. 413.)

Those who would know more of a man whose name has been almost proverbial for absurdities, may consult "An Historical and Critical Account of Hugh Peters," by Dr. Harris, the biographer of Cromwell and the Stuarts; also, an anonymous Essay (by the late Mr. Samuel Parkes,) in "The Monthly Repository of Theology and General Literature," xiv. 525, 602. In the *Landsdown MSS.*, 823, are several original letters from Peters to Henry Cromwell, "Lord Deputy of Ireland." The following passage, by Mr. Cole, in his MSS., xxiv. 138, may be no unamusing addition to this note.

"Hugh Peters was of Queen's College, where is a picture of him in the gallery of the Master's lodge, which I saw there March 21, 1771. He is in his own hair, and in a black gown, and rather a well-looking open-countenanced man. The present Master, Dr. Plumptre, told me, that when he first came to the presidentship, this inscription was on the picture, *Hugh Peters, the seditious misleader*, but that he had struck it out; so that now there is lately painted on it his name only, *Hugh Peters*. By him is a picture of Oliver Cromwell, of the same size, with his name lately painted, instead of *the Usurper Oliver Cromwell*, which Dr. Plumptre had erased. The Master supposed the two original inscriptions secured them a place in his gallery at the Restoration."

† Captain John Blackwell, the younger, treasurer of the army, M. P. or Surrey.

Mr. Robinson. I am against reading this Bill again. I could like it better if a General Bill came in to confirm these purchases and adventures, than by particular Bills. It may haply be against the General Bill. Again, in my judgment, the letters patent ought to have been recited; for aught we know it may be against the former settlement. It may be made high treason, for aught we know, to come into this gentleman's lands. We see nothing of the letters patent, what they are.

Sir John Reynolds. This gentleman is mistaken. The letters patent are recited as much as need be. Surely, it has been so debated in the council, they are so faithful as not to suffer any such clause, as to make any such thing high treason, as is alleged. We have more confidence in them than so. Nor is this against the General Bill.

Per Captain Baynes. Resolved, that this Bill be read the second time on Monday next.

Captain Baynes. It is proper to put all private business upon that day, and not take up your time.

Resolved, that a petition of Sir Hardress Waller, touching some adventurers in Ireland, be referred to the former Committee for the like petitions.

Resolved, that two more members* be added to that Committee.

Per Captain Baynes. Resolved, that the Bill for Yorkshire Cloth† be read on Friday next, the second time.

Per Colonel Sydenham. An Act for the raising of maintenance for a minister at Newport, in the Isle of Wight, was read the second time.

Colonel Sydenham. There are some blanks to be filled up. I desire it may be committed.

Mr. Downing seconded the motion.

Mr. Nathaniel Bacon. I except, because no provision is made for repairing the church; otherwise it is a good Bill.

* Mr. Collins and Mr. Stevens. *Journals.*

† A Bill, touching the Clothiers in Leeds. *Ibid.*

Sir Christopher Pack. It is a good Bill. I wish there were more of them; but I would have it provided in the Bill whether the tenant or landlord shall pay the tax.

Colonel Hewitson. I except against the clause, for imprisonment of such as have no distress.

Resolved, that this Bill be committed to a Committee to meet to-morrow afternoon in the duchy chamber.

Mr. Speaker. Here are five or six up, I cannot hear all together; but I must acquaint you with a letter from the Lord Protector.*

"Having taken notice of a sentence by you, given against one James Nayler, albeit we do abhor such wicked opinions and practices, we, being interested in the Government, desire to know the grounds and reasons how you proceeded herein without our consent."

Mr. Nathaniel Bacon. I move that the Report before you† might be sent to his Highness, for his satisfaction therein.

Mr. Highland. That will not answer the end. The desire of the letter is that he might be satisfied with the grounds and reasons why you passed this sentence upon him, without his consent. Being equally entrusted with the Government, he ought to be satisfied.

Major Audley. You ought not to have denied this person to have spoken when he desired it at the bar.‡ Were he never so wicked, you ought to give him the liberty of an Englishman. I am satisfied, that though you have passed this sentence upon him, there may be much said against it. If he had been left to the law, it had been better. I fear the danger of such a precedent. A very fierce speech he made on Nayler's behalf against the judgment, &c.

Mr. Lawrence, a judge from Scotland for the Isle of Wight, questioned the jurisdiction. He said there were but

* "To our right trusty and right well-beloved Sir Thomas Widdrington, Speaker of the Parliament: to be communicated to the Parliament." *Journals.*

† See *supra*, p. 24. ‡ See *supra*, p. 167.

three powers; arbitrary, we would not own; legislative, is upon a joint authority by the Instrument. If by a judicatory power, we must have a law; otherwise our proceedings are not justifiable.

It was the first day he came into the House, but, I doubt, at the rate of such distractions, it may be thought soon enough.

Mr. Rouse. It is true what this gentleman has said, the question is only about the jurisdiction. The justice is clear enough. I would have this debated in a Grand Committee, and the records looked into, whether the House of Lords could *de jure* pass such a sentence. Either you have done what you ought to have done in executing part of your sentence, or you have not. This will remain upon your records, and if you have done what you cannot justify, you must be whipped for whipping James Nayler. It was but a mock punishment, as they say. I would have you tender in your honour, and be careful how you violate your jurisdiction. I know it is not his Highness's intentions to offer the least injury to it.

Colonel Holland. A merchant's wife told me that there was no skin left between his shoulders and his hips. It was no mock punishment. I could wish the business were ended amongst you, that the remainder of the punishment might be remitted, and that would give his Highness satisfaction.

Sir Christopher Pack. I shall acquaint you with what the gaoler told me. There were but three places where the skin was any way hurt or broken, and it was no bigger than a pin's head. This gentleman is surely misinformed.

Colonel Hewitson proposed, that a Committee might be appointed to find out a way how to give his Highness an account in this business. If the person was favoured in the punishment, it was the lenity of the executioner, not of the sentence. I was against it in my opinion.

Sir William Strickland. It is not possible for us to stop the foul mouths of such a wicked generation. We are convinced of the justice of our proceedings, such as, I doubt not, but will, in spite of them and all their foulest aspersions, be made

out to the world. I doubt the ministers* are able to give but a very small account of him.

Mr. Downing. I am sorry we have such a person in England as James Nayler, to give us all this trouble. Those that think his Highness's letter seems to question why we passed this sentence without his consent, are mistaken. The only desire of it is, an account of the grounds and reasons whereupon we proceeded to this sentence. The grounds are the papers and records before you. As to the jurisdiction, I suppose it is no less than the power of a Parliament, the House of Lords united. We have no need of them I hope. Such like things as these have been done by the House of Lords. We have not proceeded to life and member, but only to a corporal punishment, which we have frequently done upon several other occasions, and may, I hope, do.

Sir John Reynolds. Seeing these gentlemen of the long robe are silent, I shall venture my opinion. I gave my judgment freely in it before, that we ought first to have stated our jurisdiction. I would have it referred to a Committee to consider of our jurisdiction, how far the House of Lords and House of Commons are united, and how far this sentence may stand with the Instrument of Government. I observe the gentlemen of the long robe divided in their opinions, and well may we be divided.

I think there was nothing of the punishment spared, but what fell by. That is not the dispute before us. I would have us seriously to debate this matter, that we may give his Highness an account of it. The consequence is dangerous, if we should draw these things into precedent.

Captain Baynes. I was against bringing this business into the House at the first, as being not satisfied how we had a law to punish him; but as it is now, I would it debated freely in the House how far the jurisdiction will extend. The legislative power is not to be taken up but upon an extraordinary score. This precedent may be of dangerous consequence.

Mr. Solicitor-General. To the order of your proceedings:—

† See *supra*, p. 79, where, in the *Note* ⁴, for *Cambridge* read Oxford.

The whole question before you is, why a judgment, without my Lord Protector? The letter says, why a judgment without us. "We desire," saith the letter, "to know the grounds and reasons whereupon you made such a judgment." I desire that we might have leave to speak against your judgment.

Mr. Godfrey. This gentleman moves very properly to have leave to speak against the judgment. If you give this leave I cannot but tremble to think of the consequence. I am sorry this happens, for you to go about to arraign your own judgment, which you have assumed to yourselves, asserted it upon a solemn debate, not passed *sub silentio.* Hitherto you have declared your judgment upon it. If you revoke this, you must not only cry *peccavi* to James Nayler for what is passed, but to his Highness also, and also to the nation. Here is your power asserted on one hand; the supreme magistrate, on the other hand, desiring an account of your judgment. Where shall there be *tertius Arbiter.* It is a hard case. No judge upon earth. I shall humbly move that a Committee might be appointed to acquaint his Highness with the sad consequences of such a dispute, and to desire him to lay aside the further questioning of this judgment.

Mr. Attorney-General. We are bound up by our own judgment. We cannot now speak against it, nor against the fact. You have asserted your judicatory power. This is the first case. It is good it were now settled. I hear his Highness plead nothing for the fellow. I think it were best first to whip him and then bring in a Bill to hang him.* I would have this business freely debated how to give my Lord Protector an account in this matter, wherein, no doubt but he will be satisfied with what is for the honour and good of the nation. That judgment upon Noble† was for breach of privilege, which was ever allowed the House of Commons.

* This speaker can scarcely be serious. Perhaps he is here covertly sarcastic on this whole grave parliamentary proceeding against a not ill-designing visionary. This, at least, is the first time in which *Prideaux,* a man so reasonable as to have chosen Tillotson for a tutor to his son, appears among the merciless men on this question. See *supra,* pp. 29, 31, 156.

† See *supra,* pp. 148—150.

Mr. West. This is a business of great concernment, and great time spent in it. I wish it had not. I must differ from that last honourable person to give leave to dispute the jurisdiction. I understand no such desire in the letter, to inquire into your jurisdiction. If his Highness were acquainted with the matter of fact, and appoint a Committee to this purpose, I hope it would give satisfaction to his Highness; but if you begin to dispute your jurisdiction, I know not when you will end. Besides greater affairs will be ousted.

Major-General Kelsey. That gentleman is mistaken. The letter does as well desire an account of the jurisdiction. I know not what to say to it, till you first put the question to speak against your judgment.

Mr. Fowell. I was for proceeding upon the legislative power, for I would have had him die for the crime. But it is not hard to find a precedent, several precedents, wherein not only the House of Lords, but the House of Commons have, by their judicatory power, liberty to pass greater sentences than this. The court of the upper bench might have done as much against him as a riotous disturber of the peace, &c. There was a case in the latter end of King James's time where one Floyd abused the Queen of Bohemia, and said she was a whore, &c. The House of Commons, of their own jurisdiction, proceeded to sentence him to ride backwards on a horse, with a paper, &c. The House of Lords questioned it, but it was to no purpose.* I would have a Committee to

* 1621, April 28, according to the *Journals*, Edward Floyd, who appears, by his crossing himself, to have been a Roman Catholic, was brought before the House of Commons, for having falsely reported that Prague was taken, and that *Goodman* Palsgrave and *Goodwife* Palsgrave had run away. His sentence, in which he is described as "Edward Lloyde, lately of Channemayne, in the County of Salop, Esq." was in these terms, May 1st.

"That he be brought from the Fleet to Westminster, unto the great yard before the door of the great Hall of Pleas, and be there set and stand upon the pillory from nine until eleven of the clock in the forenoon, with a paper upon his hat, with this inscription in capital letters, of these words, 'For false, malicious, and despiteful speeches against the king's daughter and her husband;' and from thence shall presently ride to the

inquire of the precedents, and no doubt but it will give his Highness satisfaction.

Lord Chief-Justice. It is fit that leave should first be given to speak against this judgment, and, no doubt, when the business is fully debated, about the judicatory power, but a way may be found out to preserve a right understanding between his Highness and us, without the need of a *tertius Arbiter*. We assert our power, and he asserts his; no doubt but, in a fair way, by a meeting, this may be understood.

Mr. Robinson. This is the most unfortunate business that ever came into this House. I was against it, at first. I understand not what is meant, to give leave to speak to the jurisdiction. It is surely meant to give leave to speak against the jurisdiction of this House; for no man need have leave to speak to or for the jurisdiction. It is every man's duty to assert that.

When there happened any difference between the jurisdiction of the House of Lords and the Commons, they always appointed Committees of both Houses to meet and dispute their jurisdiction, and so convince one another. If this House have no judicatory power, I doubt we have no foundation. This is the essence, the life of our being.

I am sorry it happens upon this case. I was as much against this business as any man, but I am not satisfied to give way to speak against the judgment. If we should give

Exchange, within the City of London, upon a horse, without a saddle, with his face backwards towards the horse's tail, holding the tail in his hand, with the former paper on his head, and be there and again set and stand upon the pillory two hours, and from thence shall ride in like manner to the Fleet, and there to remain until the next Friday morning; and in that morning to ride in like manner into Cheapside, in the City of London, and there shall be set and stand upon the pillory with the former paper and inscription, by the space of two hours, that is, from ten until twelve of the clock, of the forenoon of that day, and ride back to the Fleet in like manner as aforesaid, and that there he be set and assessed upon him a fine of a thousand pounds."

For the discussions on this case, between the two Houses, see the references in the article, *Floyd, Edward*, in the Index to the 1st volume of the *Commons' Journals*.

leave, and upon the debate it be found that we have exceeded our jurisdiction, where are we then? We must, every individual, go to my Lord Protector for a pardon. We are in a *premunire*, which may extend far.

I like not such a debate. It is not impertinent that you should resort to your precedents in this case. The Protector does declare in the Instrument, that he will maintain the laws and customs of this nation, and I take these records to be the laws and customs of this nation.

This demurrer to your jurisdiction puts all your business to a stop. It doth it virtually if not essentially. I must be forced in this to speak against my judgment, and contradict myself. I am against the thing, yet cannot admit any dispute upon the judgment, but that we ought to assert it. I would have a Committee appointed to seek out the precedents, and give his Highness satisfaction, and to adjourn the debate upon this business, till we can have further time to satisfy one another.

Mr. Goodwin. I doubt this will come under the question whether you be a Parliament or no. If you be a Parliament you have judicatory power to pass this sentence. I know no reason why you should appoint a Committee to examine your jurisdiction. You ought to assert it, and not to admit any debate against it. If you arraign your own judgment, what shall we be called? I have heard of a Parliament called *Insanum Parliamentum.** I wonder what his Highness will think of us, if we should not assert our jurisdiction. If we should rise without asserting our power, James Nayler may have

* The Parliament held at Oxford, in 1258. *An.* 42, *Hen.* III. The name was probably given by the Royalists, on account of the popular tendency of the enactments. A Parliament held at Coventry, in 1405, *An.* 6, *Hen.* IV. was named by the clergy, for excluding the professors of Canon and Civil Law, *Parliamentarum Indoctorum.* Another held at Coventry, in 1460, *An.* 38, *Hen.* VI., in which the Earl of March, afterwards *Edward* IV. was attainted, was called *Parliamentum Diabolicum.* See *Parliamentum* in *Dictionarium Anglo-Brittanicum*, 1715; *Parl. Hist.* ii. 87. *Rapin* names the Parliament of *Charles* II. which commenced in 1661, and continued nearly eighteen years, *Le Parlement Pensionnaire.*

his action against every individual member. Let us behave ourselves like wise men. We have passed a judgment, and owned the jurisdiction. Let us not part with it.

Mr. Rouse. We should return this short answer to his Highness's letter, "We had power so to do." I doubt not you will satisfy my Lord Protector with it. I think it altogether improper to admit any debate upon your jurisdiction.

Sir William Strickland. If you arraign the jurisdiction of your Parliament, I shall desire to go home. I cannot stay to serve my country with freedom of my conscience. What can the Cavaliers say, but to deny our jurisdiction, or the sectaries abroad. I hope we shall be able to dispute and assert our jurisdiction. This is the essence and being of a Parliament. If we have such a power, let us assert it. I desire a Committee may attend his Highness, to satisfy him of the reasons of our proceedings, and that we have done nothing but what former precedents do warrant.

Lord Whitlock. It is no new thing, in these extraordinary judgments, upon matter *ex post facto*, to examine even the self-actions of a Parliament; and if at any time they had occasion to take up the legislature, it was with great caution.

The case of Minns and Weston, in *Richard II.*, where the House of Lords demurred to their own judgment; and so Hacklyt's case and Thorpe's, for taking a bribe, adjudged to death. The Lords have said they would go no more in that way, and so the House of Commons; but when the Parliament has given a judgment, and executed part of it, I hope no person that tenders the honour of a Parliament, will speak against it. I would have provision for the future made, to appoint how far jurisdiction in these cases shall extend.

I humbly move you would appoint a Committee to look into the precedents concerning this business, and find out a way to give his Highness satisfaction.

Lord Fleetwood. If I thought you were fit for a question, I should not trouble you. I think this business should now be ascertained, for the ease of the people; for your jurisdiction ought to take measure from what is for the good of the people. It is fit the people should know how far it should

extend. I desire a Committee may be appointed to attend his Highness, to satisfy him of the grounds and reasons of this judgment, and to confer with him about a way for the future, that we might not walk without a rule.

Mr. Downing. My heart is very full in this business. I wish I could propound an expedient to heal this business. We need not dispute our jurisdiction ourselves. There are enough to dispute it. The Instrument of Government is but new, and our jurisdiction is but new too. It is dangerous either for him to question our power, or for us to question his, in matters that are for the public safety: we must both wink. If we should enter upon such a moot point, I dread the consequence. What bred all the former differences, but points of jurisdiction. I would have us to return a short answer to the letter, for I understand not that my Lord Protector does at all question, or desire an account of our jurisdiction. I shall presume that this is no inclination of his Highness to give the least encouragement to the crime. I know it is drawn from him by importunity, rather than any intention to dispute the authority of Parliament. As I said before, we must wink at one another. Should we look into every thing that is done in the council?

Mr. Ashe, junior. Return this short answer to the letter, "that the Parliament have discharged their consciences, by what sentence they have passed upon James Nayler." It was usual, in former disputes of jurisdictions, to return this answer, "that they have done nothing but what was warrantable by former precedents. I agree it to be of a very dangerous consequence to debate it.

Lord President. If you refer this business to a Committee, what can they do but assert your jurisdiction, and what you have done? They can but say it in other words; but you must give a liberty to speak to the jurisdiction. Otherwise you will neither satisfy the ends of his Highness, nor of the people, to ascertain what may be done for the future in these cases. As to the matter of fact, I suppose the report is sufficient to satisfy his Highness. Your calling it blasphemy, is not the business the letter inquires into.

Major-General Jephson. Appoint a Committee to inquire of the grounds and reasons of your judgment, and to consult former precedents, and then, having something before you, you may debate it; and no doubt but a way will be found out to give his Highness an account according to the letter.

Mr. Briscoe. It is not for your honour to derogate from your jurisdiction. You have passed your judgment, and ought not to recede from it. *Non datur vacuum.* Surely your jurisdiction must be asserted; else you overthrow your being and essence, the very life of a Parliament. A Parliament cannot subsist without a judicatory power, as well as a legislative.

Mr. Recorder. This is a precedent *primæ impressionis.* Let us consider upon what bottom we are. Though we have jurisdiction, I shall readily assert it as any man, yet I hope this has its *non ultra.* It is not infinite, for then all other powers are swallowed up in the legislative. I conceive, before you are fit to refer this to a Committee, you should give every member liberty to speak to the jurisdiction.

Mr. Bodurda. Suspend your debate upon this business, till weightier matters be over. Though it come by letter, yet other business may be of more concernment to his Highness; and, in the mean time, the punishment may be suspended, and, not executed till further order from the Parliament.

Mr. Speaker offered four or five questions, and desired to know which he might put. Going to put it for a Committee to examine the precedents, and prepare an answer.

Lord Lambert. This is a business of great consequence, and I doubt not but it will be so well managed, as that you shall be called no less than a Wise Parliament, as was hinted behind.

It is not without good reason that his Highness should be satisfied in the grounds. He knows not by what way you have proceeded, whether upon the judicatory or legislative. He is under an oath to protect the people, both in freedom of their consciences, and persons, and liberties. He is bound to inform himself in whatsoever he finds encroaching on any

of them. As you are constituted, your power is joined with his in the jurisdiction. I would that you went hand in hand in your judgments.

I hope there will be no danger, if you give every man liberty to speak to the whole matter; to the jurisdiction, and to the thing itself. Not that I would recede from any thing we have done, nor that his Highness should retract any thing that he has offered; but that we might candidly understand one another after the business is fully debated.

Sir Gilbert Pickering. If his Highness had been acquainted with it before, it had been no worse. It was offered by a learned judge,* at the beginning of this debate. It is very fit this jurisdiction should be debated. It seems, though the judicatory power of Parliament cannot extend to life, yet, by this means, by a vote of to-day, you may pull out a man's eyes to-morrow; slit his nose, or cut off his hands, ears, or tongue. This is very hard, and ought to be considered.

I could wish you would go as slow a pace as may be, in this business, fully to debate the business, that you may give his Highness a clear account, who, being under the obligation of an oath, ought certainly to have satisfaction in this matter.

Lord Whitlock. If you refer it to a Committee to prepare reasons to answer the Lord Protector's letter, it tends too far to a concluding yourselves as to your jurisdiction. The question should rather be, that a day may be appointed to debate this business, without mentioning any thing of giving leave to speak to your jurisdiction. I conceive this encroaches less upon your power than the other question.

Mr. Bond proposed to rise, and take this business up to morrow morning.

Sir William Strickland. It is not for your honour to part without coming to some resolution in this business. It will cause people to talk strangely abroad.

Mr. Highland. I am sorry that you are at so great a loss in this business, whether you will assert the judgment and

* Lord Fiennes. See *supra*, p. 90.

sentence which you have passed. If you assert not your own power, you will be matter of laughter, both to wise men and fools. I had rather that you would appoint a day to debate this business at large, and assert your judgment, so far as it may stand with law and satisfaction of your consciences.

Major-General Packer. If you appoint a day freely to debate this business, you do less subject your judgment than by referring it to a Committee. This is a putting a demur or stop upon yourselves, as if you were at a loss what answer to give.

Sir Charles Wolseley. This constitution is new, and this is the first case. It will not be enough to return this answer, that we have passed this judgment because we have passed it. The question is, whether this House has jurisdiction to pass such a sentence as this. This House cannot put any thing but an affirmative upon a law or a judgment. The negative lies in his Highness. I would have a day appointed fully to debate this business.

Mr. Bacon. I know no other grounds and reasons, that we can give his Highness, but those that we have already before us. If we go to seek new reasons, we shall but deceive his Highness and the people in what we have done. Let God and the world judge if you ought not to assert what you have done. Let what you will be done for the future, in such cases, but never dishonour yourselves. I hope it will never be done. to alter this sentence that you have passed.

Men's lives and liberties, estates, &c. are in the power of the Parliament. I would have us assert our own power."

Colonel Sydenham. Grant this position, that the Parliament has power of men's lives, liberties, &c., then I confess no man can speak against your judgments. Will you give this power to a Committee, which you will not take yourselves, to debate your judgment. Unless you give liberty to debate it freely here, I know not what can be done. I would have it freely considered here, what may be the rights of Englishmen, what due bounded liberty we shall have. It

will concern us all to look about us. But if you intend such an answer, as in plain terms to assert your jurisdiction, and say you have done it because you have done it, this will neither stand with the honour nor wisdom of a Parliament.

Major-General Boteler. I am satisfied that this House had a judicatory power to pass this judgment. I wish this letter had come sooner, before any part of our punishment had been executed. I desire that we should appoint a time to assert our power, and that, in the meantime, the corporal punishment might go on.

Mr. Berkeley. You are not ripe for any question. I desire you would adjourn this debate, till to-morrow.

Mr. Robinson. Adjourn the debate, but suspend the corporal punishment, till you have debated the business.

Lord Lambert. I would not have you rise without a question, or adjourn this debate. I doubt this cannot so easily be laid aside as the petition was.* I wish it could be laid aside with satisfaction to all parties. I desire you would adjourn this debate till to-morrow.

Colonel Holland. Suspend the punishment for a week. In the interim, you may debate the matter. It is a business of great consequence.

Mr. Attorney-General. If you suspend the punishment, you grant the question; and, upon the letter, demur to your judgment, without further examination. For that reason, I would have the punishment go on. I doubt not but full satisfaction may be given of the grounds and reasons of your proceedings therein.

Upon a full debate of the matter, no question was put. Some only moved to adjourn the debate till to-morrow morning. We sat till two, and dined at court.

No Grand Committee to-day; nor any other but one for Bibles,† and Captain Ned Lister's Committee adjourned till Thursday fortnight.

* See *supra*, pp. 216—221.

† See *infra*, the Order, January 16.

Saturday, December 27, 1656.

A petition touching the salt trade at Newcastle,* referred to the Committee of trade.

A petition from York and Hull,† touching wines, referred to the same Committee.

Per Major-General Packer,

A Bill, touching dividing of a common,‡ for Sir Cornelius Vermeudon, with the consent of the freeholders and Commoners.

Mr. Bond affirmed that the tenants and freeholders did not consent. Whereupon the Bill was rejected.

An Act for settling lands upon Judge Advocate Whalley and Erasmus Smith, for their adventures in Ireland, was read the third time.

Lord Whitlock offered a rider to this Bill, to settle the house of Portumna, Park, manor, and lands, four thousand acres of land, (excepted in the Bill) upon Lord Henry Cromwell, in lieu of his good service, and arrears due to him, to be holden of the castle of Dublin, of his Highness in free soccage, to him and his heirs for ever.

A good gift this morning; a manor, park, house, and 4,000 acres, Irish measure:—large things.

Nobody spoke against the rider. The question put to pass it and not one *No*. Some said in the gallery it was a good rider. The word Develyn for Dublin.§

Sir William Strickland. I hope you will readily pass it; for this gentleman has done you eminent service. It is not a free gift, but for his arrears.

Sir John Reynolds. This is no great matter, not above

* From "the Saltmakers of the South and North Sheels, Sunderland and Bleeth."—*Journals.*

† From "the Mayor and Merchants of the City of York," and "of Kingston upon Hull, and the Wardens and Brethren of the Trinity House there."—*Ibid.*

‡ "The moor, called Sedgmore, otherwise, King's Sedgmore, in the county of Somerset."—*Ibid.*

§ "*Ordered*, that the word Develyn be made Dublin."—*Ibid.*

1,000*l.* worth. His arrears will amount to more. I desire you would pass it. It is as little as can be.

Mr. Goodwin. This is less than his good service and merit. There are 2,000 acres more in Connaught, I desire that may be added. All is too little.

Colonel Markham. Those 2,000 acres are of very small value. I desire they may be added. It is too little for his good service.

Mr. Downing. I rise up more for ceremony's sake than any thing else; but it is upon the foot of his good service, and others, that we sit. What you have given here, is too little for his good service. I desire it may pass.

Resolved, that the 2,000 acres be added, in all 6,000 acres. Two *Noes:* Mr. Robinson and Major-General Lilburn.

Mr. Speaker told us of the business of the day.

Mr. Robinson said, there was a Bill concerning fish; and desired it might be read.

Resolved, that this Bill do pass for a law.

Resolved, that his Highness's consent be desired thereunto.

The order of the day read; viz. to answer the letter.

Mr. Bodurda. Suspend the debate, in regard of your unfitness to sit, who have taken great pains in that chair. It will be no recession from our judgment, nor dishonour to us, to put off the debate for some time. I was as much against the judgment as any man, yet none shall assert it higher than myself, now that it is passed. I shall not recede from it; but in the interim I would have the punishment suspended for a week.

Major-General Whalley. I know his Highness's principles are far from countenancing any such wicked practices. I am confident he is not against the sentence, but would go hand in hand with us in bearing witness against such horrid things. I am further satisfied that he intends not by his letter to offer the least invasion upon the power of Parliament. I should desire you would give leave that the jurisdiction of this House might be spoken to. I doubt not but it may be fully made out that what we have done is warrantable by former prece-

dents. If the House of Lords and Star-chamber might pass greater sentences, surely we may.

I desire that this business may be fully debated. It may be justified, what you have done.

I was for punishing him by death: I am not ashamed to own it, it was my conscience. I am no advocate for him. I see no cause to abate any thing of his punishment. This will bring the shame upon you, and clear and own him. But I desire, till there be a satisfaction, to every man's conscience, as to the jurisdiction, that you will suspend the punishment till Tuesday, and connect my desires with that, that liberty might also be given to speak to the jurisdiction.

Mr. Bond. I desire, for your ease, in regard you are not well, that the House may be resolved into a Grand Committee, and I doubt not but we shall give one another satisfaction.

Mr. Speaker. I am beholden to this gentleman; yet I desire you would take no care for me till I complain myself.

Sir Gilbert Pickering. The punishment should be suspended. Otherwise, while debating the legality of the sentence, the greatest part will be performed. I cannot see any such inconveniency by reprieving for two or three days. I am confident it will give all parties satisfaction.

Mr. Hussey. The motion that was first made was to suspend the execution for a week. It has been firsted and seconded. I desire it may be put to the question.

Mr. Robinson. I shall be pulled out of this House, before I shall condescend to speak to this jurisdiction. If you preserve not that, which is *salus populi*, the privilege of Parliament, you overthrow all the people's liberties. I shall be loth to part with this privilege. I cannot haply, if I would. We cannot give away the fountain. The streams cannot give away the head. I would have this business seriously debated. His Highness and we must be mild one to another. The letter is very modest. The supreme judicatory is originally in the people. The Instrument says, that the legislative power shall be in a Parliament and a single person, but it says not the supreme judicatory of the nation. The further such debates are entered into, the worse.

Colonel Purefoy, *Mr. Puller*, and *Mr. Moody*. If you reprieve this person, you must do it of yourselves. His Highness does not desire it. We see the inconvenience of reprieving him. Before, he was let out of Exeter goal,* and what was the issue? He rode in triumph, presently after, into Bristol,† and this very week's reprieve has brought the mischief of people coming to worship him.

Mr. Downing. I am confident it is not in his heart to give the least countenance to such persons. I know it is not his intentions to have this punishment respited, and this, by the importunity of such as are afraid of the consequence. I would have us return this short answer to the letter, that we take ourselves to be a Parliament, with all appurtenances; and, therefore, we did it by our judicatory power, being the supreme judicatory of the nation. When the letter came in from the excluded members, the council was desired to show the grounds and reasons why they were kept out. Their short answer was this: they did it in pursuance of the Instrument of Government.‡ I desire the punishment may go on, and you not recede from your judgment.

* Where he had been confined with many others, in June, 1656, "the justices" having made "an order of sessions, to apprehend, as vagrants, all *Quakers* travelling without a pass." See *Sufferings of Quakers*, i. 70, 71.

† See *supra*, p. 10, *note* *.

‡ On the meeting of this Parliament, September 17, 1656, those only were admitted who produced a certificate, purporting that they were "approved by his Highness's council." The rejected members, the next day, presented their claim, in a letter of complaint to the Speaker. The House communicated with the council, and appeared so satisfied with their reply, as to resolve "by a majority of 125 against 29, that the persons returned, who have not been approved, be referred to make their application to the council for approbation; and that the House do proceed with the great affairs of the nation."

The rejected members immediately published a remonstrance signed by 93 names. It has been justly remarked, that many of these must afterwards have taken their seats "from the frequent mention of their names as tellers, &c." A few have already occurred in this *Diary*; and several "voted for making Cromwell king." See *Whitlock*, *Parl. Hist*. xxi. 3, 21—37.

Mr. Waller. If you will not do it upon his Highness's letter, do it for the petitioners on his behalf,* who were honest men. Neither his Highness, nor they, did plead any thing for the crime, but only to abate the punishment. It was Christ's rule. He remitted the punishment, with owning the crime. I shall not presume to know so much of his Highness's intentions as that gentleman speaks of, but I believe he thinks himself concerned in the punishment, as tied up by the Instrument. I shall not detain you, lest the sentence be executed while we are debating against it.

Major-General Howard. Suspend the punishment, till you have further debated it, and put the question to reprieve the sentence. I believe that may give his Highness a present satisfaction, and agree with your health, by coming soon to a question.

Lord Fiennes. I am not to reprieve the punishment upon the account of the petitioners. That petition was of dangerous contents, to debar the civil magistrate in matters of religion. I hope we shall all bear our witness against such principles and practices. That is too much liberty. Nor need we suspend it upon the account of his Highness's letter; for it is not there desired of us. But, in regard we have had no return from the ministers,† it may well be suspended upon that single account, and your health ought to be respected, which will be best, by determining this question. You have mixed mercy already with justice, and this is but an enlarging of that mercy. It has been usual to demur, after judgments of this nature passed, and provided that they should not be drawn into precedent. It is safest for the people when least use is made of the legislative power.

Mr. Bampfield. It is not for your honour to suspend the execution, for you were misinformed before; and it was a shame to affirm any such thing, as was openly spoken here, that such severity was exercised upon him.‡ I desire you would breed yourselves no more inconvenience, as to suffer the people to worship him another week. That was all that

* See *supra*, p. 182. † See *supra*, p. 183. ‡ See *supra*, p. 247.

was gained by the reprieve. You hear no return of any good answer from the ministers, but rather railing language, I believe.

Colonel Markham. If this should pass in the affirmative, you will do my Lord Protector the greatest dishonour that ever was. He does abhor the crime. I am confident he does not desire a reprieve. If he did not abhor it, for my part, I would never serve him. It will be ill news through all the three nations, to say that a letter came to us on the behalf of a blasphemer. It is an abominable thing to hear such unjust things informed to this House, as that of his whipping so hard, or his being sick. I would have the merchant's wife that reported it * sent for, and whipped. I am informed it was quite otherwise. I tremble to consider it. I am confident the letter is mistaken. I desire you would be so tender of your honour as to put that question.

Lord Lambert. Calmness better becomes this House. I like not these reflections. I desire the gentleman may explain himself. If any of this House have informed it.

Colonel Markham stood up to justify himself, and said he reflected upon no member, but only upon the merchant's wife. He believed he that told the House of it was so informed. He honoured the Parliament, and every member, &c.

The question being put, to suspend the punishment, the House was divided by Mr. Highland: in the meantime the Speaker retired, being very sick.

Yeas, 59, went out; *Noes*, 113, sate.

Tellers, Mr. Lucy and Colonel Throckmorton, for the *Noes*.

Colonel Jones and Captain Baynes, for the *Yeas*.

Resolved, that the punishment be not suspended.

Per Major-General Whalley and *Sir Lislebone Long*,

Resolved, that Mr. Edward Nevil have leave for a month.

Per Lord Fleetwood,

Resolved, that Mr. Blany, of Ireland, have the same leave.

Resolved, that Wednesday next be the day for private petitions.

* See *supra*, p. 217.

Per Lord Lambert,

Resolved, that Major-General Howard and Mr. Swinton have leave to go into the country, in regard his Highness has occasions for them in his council at Scotland.

Lord Fiennes. Put off this debate till Friday, and read the Bill for the Excise, upon Tuesday.

Sir William Strickland. Delay no time in giving his Highness satisfaction in the desires of his letter.

Resolved, that the House be adjourned till Tuesday.

Resolved, that the debate, touching the answer to his Highness's letter be resumed that day.

Resolved, that the Committee for public faith have power to send for papers, witnesses, and records.

Colonel Rouse reported amendments to the Bill for Elizabeth and Judith Terry to join with their father to let leases of lands for twenty-one years, &c.*

Resolved, that this Bill be ingrossed.

A petition from the Cloth-workers of the west, referred to the Committee of Trade.

The Committee for Mr. Scot and his wicked wife sat in the painted chamber. Mr. Godfrey had the chair (who once intended to have hanged her in the country.)† Both parties appeared: she said, "How do you do, Mr. Scot?" He answered little: no sweetheart, dear, nor angel. This Committee adjourned till this day se'nnight.

In the Exchequer Chamber saté the Committee for the Fens.

In the Inner Court of Wards, Mr. Aklam's Committee.

In the Queen's Court the Committee for Customs, and upon the Bill for Excise.

This day B.‡ and I were to see Nayler's tongue bored through, and him marked in the forehead. He put out his tongue very willingly, but shrinked a little when the iron came upon his forehead. He was pale when he came out of the pillory, but high-coloured after tongue-boring. He was

* Several copyhold estates, held of the Manor of Stoke Newington, in the county of Middlesex. *Journals*.

† He was Recorder of Maidstone.

‡ So in the MS.

bound with a cord by both arms to the pillory. Rich, the mad merchant, sat bare at Nayler's feet all the time. Sometimes he sang and cried, and stroked his hair and face, and kissed his hand, and sucked the fire out of his forehead.* Nayler embraced his executioner, and behaved himself very handsomely and patiently. A great crowd of people there; the sheriff present, *cum multis*, at the Old Exchange, near the conduit.

Captain L., Mr. E., Colonel Carter, Colonel Bethel, and I at the Sun, till six.

Tuesday, December 30, 1656.

A petition from Mr. Darnall, to have the arrears of 200*l.* per annum paid, as established to him by order of Parliament in 1649. He had it paid till 1653; desires the same may be continued.

Sir William Strickland, Colonel Purefoy, Mr. Robinson, and *The Master of the Rolls.* Such an order was made. It was done for his good service to you in this House, and settled out of the revenue.

Mr. Goodwin spoke to the same purpose.

Major-General Disbrowe. It is fit every man should be encouraged for the service he does or hath done for you; but if this 200*l.* per annum have been paid three years together, and haply but a quarter of a year's service done? I would have it continued while the service is, but not longer.

Lord Lambert was against confirming the establishment, for the reasons aforesaid.

Resolved, that this 200*l.* per annum be confirmed upon Mr. Darnall, and the arrears thereof.

Resolved, that it be recommended to his Highness the Lord Protector.†

* This person afterwards attended Nayler during his punishment at Bristol, see *infra.*

† "To settle the said salary upon the said Ralph Darnall, during his life, as clerk assistant to the clerk of the Parliament, and to give warrant for the payment of the arrears." *Journals.*

Mr. Attorney-General brought in a petition touching Lord Fiennes and Mr. John Ashe,* for relief against bonds entered into by them for the public.

Resolved, that this petition be referred to a Committee.

Resolved, that it be committed to the Committee of the Devizes.†

Resolved, that Mr. Attorney-General, Mr. Recorder, and others, be added to the Committee.

Per The Master of the Rolls,

The petition of the Soap-boilers against the Patentees. He affirmed it to be a great grievance and oppression.

Resolved, that it be read to-morrow morning.

Per Colonel Whetham and *Lord Lambert,*

An Act for confirmation of a Grant by his Highness, of the Barony of Keniell, in Scotland, to General George Monk. Read the second time.

It recites, that the grant is for his good service. A rent of 4*l. per annum*, is reserved as a *blanche ferme* to his Highness. The lands were the late Duke of Hamilton's.‡

Lord Cochrane, Lord Broghill, Dr. Clarges, Colonel Whetham, and the *Attorney-General* proposed, that this Bill should be committed.

Resolved, that it be referred to a Committee, to meet in the lobby of the Lords' House to-morrow afternoon, at two.

Per Mr. Bond,

Resolved, that all that serve for Scotland be of this Committee.

Captain Baynes. The order of the day was, the Spanish business.§ I desire that, in order thereunto, the Bill for the excise might be read.

Mr. Speaker. The order of the day is the debate upon his Highness's letter.

Mr. Attorney-General. The House is too thin yet to take up such a debate. Here is a short Bill for the maintenance of ministers in the city of Bristol. I desire it may be read.

* "And Mr. Clement Walker."—*Journals.* This was the virulent Presbyterian who wrote the "History of Independency."

† See *supra*, p. 228.

‡ Earl of Cambridge in England, executed March 9, 1648-9.

§ See *supra*, p. 40

An Act for explaining a certain Act of Parliament for the maintaining of ministers, and the more frequent preaching of the Gospel in the city of Bristol, and for supplying the defects of the said Act. Read the first time.

Resolved, that this Bill be read the second time on Friday next.

Lord Fiennes presented a petition of the President and Scholars of *Corpus Christi* College, in the University of Oxford, touching a right of presentation to a Benefice of Mesyhampton, in Wiltshire, and Merston Measie, in Gloucestershire. By an ordinance of Parliament, this Mesyhampton is united to Merston Measie, whereby the College have lost their right of presentation, and the presentation has fallen upon one Mr. Genner, a late member of Parliament; desires it may be repealed.

Mr. Robinson. I am against referring the petition. If there were a necessity of uniting these parishes, it is good, for I know there is need in many counties to unite.

Mr. Croke. The College were never heard, when their right was taken away. I desire it may be but examined, the right of both parties, and then do in it what you please.

Alderman Foot. The least that can be done, is to refer it, that both parties may be heard.

The Master of the Rolls. Mr. Genner has built a fair church at Merston Measie. I would not have that pulled down, nor the right of the College taken away; but that maintenance may be provided for both.

Lord Whitlock and *Sir William Strickland.* There is all the reason that may be, that the College should be preserved in their right. They have no heirs, but must repair to you. I desire this petition may be committed.

Resolved, that this petition be referred to a Committee, to meet to-morrow in the Duchy chamber. To send for papers, witnesses, &c.

In naming the Committee, Colonel Whetham and Lord Strickland named Major-General Howard, by the name of Lord Howard; but the clerk writ him down Major-General Howard.

Major Porter brought in a Bill for Confirmation of Claims,* and Mr. Speaker said he had waited a fortnight for it.

Major Brooke seconded, that it might be read.

Mr. Robinson. If you have nothing but private business, I wish we may go home again. Let us do some public business. I dare say, more private Bills are brought in this Parliament, than in all the Long Parliament.

Mr. Speaker caused the order of the day to be read, about the letter.

Major Aston. The most necessary business is the debate upon the letter, to preserve a right understanding between his Highness and us, which ought not to be put off. I desire that may be the first business, that no just cause of exception may be against us, but that we may go on hand in hand in unity.

Mr. Robinson. The order of the day, is the Bill for the excise, in order to monies for the Spanish war. If you have no occasion for monies, let us know, that we may go home. I believe it was the great reason of calling us hither, to carry on that war.

Mr. Bond called for the Spanish business.

Mr. Highland stood up and made a long speech, how much the lives, and liberties, and estates of the people of England were concerned in our late judgment against Nayler. Better we had never been born than have taken that liberty to ourselves, to exercise such a power over the liberties of the people. We had better deny ourselves, than let such a thing pass.

Sir Thomas Wroth. This gentleman does, in plain terms, arraign the proceedings of this House. I would have us tender in entering upon such a debate. The business of the Spanish war will not admit of a delay. They will not stay till we be ready.

* "For relief of all such persons who have obtained allowances of their claims, in pursuance of the instruction of the Council of State, given the 15th June, 1653."—*Journals*.

Sir John Reynolds. A short vote or resolve of this House, never to draw this judgment against Nayler into precedent, would haply give satisfaction for the present; and, in the meantime, you would go on with the Spanish business.

Mr. Bond. To read the Bill is most for your service. You will lose the benefit of the excise upon fruits. The Spaniard will not stay till you be provided for him. I desire you would go on with the Spanish business.

Sir Gilbert Pickering. It is a matter of great consequence, and ought not to be put off. There is much of the interest of the Instrument in it; I desire you would proceed upon it now.

Major-General Goffe. I doubt it will not give such satisfaction, to put off this debate. I presume his Highness does expect an answer to his letter.

Lord Fleetwood. This is not a matter for slight, as some take it for. It concerns the liberties of the people of England, and his Highness expects an account of it.

Major-General Whalley. I am not for putting off this debate. The House is full, and I perceive men are prepared to speak to it. I hear some say they are ready.

Major-General Boteler and *Major-General Packer.* It ought not to be put off, now that you have appointed this day. I desire you would go on in it. It may be a means to preserve a right understanding; and what will be said abroad, if you put it off.

Colonel Winter. You need not put a question to go on with the debate. You have entered upon it already.

Captain Baynes. It is too late to read the excise Bill now. It will take you till three o'clock. I desire you would go on with the debate upon the letter.

Sir William Strickland. I desire you would go on with the debate. I see no such difficulty, but that an answer may be soon given to the letter. I hope it will easily appear that our jurisdiction did extend to the sentence we have passed. His Highness seems not to question it, only would know the grounds and reasons whereupon we proceeded.

Mr. Speaker was offering a question to adjourn this debate

till Friday or Monday, but the business went on without a question. And after *altum silentium*.

Major-General Disbrowe stood up and said, this is the first time I have heard this letter read. It is but equity, if his Highness be unsatisfied in any thing of our proceedings, as relating to the Instrument, but we should satisfy him in it; he being joined with us in securing the peace and safety of the people. If there have been any error in our proceedings, we ought to rectify it. Otherwise, it will remain as a dangerous precedent, and any of our children, nay, his Highness's children, for they come to be under protection, may afterwards be brought under the danger of such a precedent. It is fit we should satisfy his Highness, and one another, in this thing.

I desire that a considerable number of the House might be appointed as a Committee, to wait upon his Highness, to understand his pleasure in it from time to time, to satisfy him of the grounds and reasons of our judgment.

Lord Lisle. I was against taking up this debate, before the sentence was executed upon Nayler. I would not that such a person should be the subject of our debate. It is clear that this House has a judicial power. Writs of error lie here from the Upper Bench and Exchequer Chamber. I am as clear that, in some cases, this House has not a judicial power; as either, where there is a law in being, or there is no law in being. No jurisdiction in treasons, at the common law, and not within the statute 25th Edward III. This must be done by King and Parliament, (*i. e.*) by Act of Parliament. The question now is, whether, originally, this House has power to give a judgment judicially, no positive law being in force against that offence. You must not confound the legislative and judicial power together. It were best to consult precedents in this case.

Mr. Robinson. This gentleman goes a little too far. He ought to speak to the letter, and not to the extent of the jurisdiction of Parliament.

I appeal to that gentleman, if he have not given his vote in many such like cases. Did not the Long Parliament, by

a vote, declare treason; that all that adhered to the king were rebels and traitors? Was not there treason without the king's consent? I never heard he had given his consent to declare that. The like case was, I appeal to you, in 1648, when the Scots invaded this nation. Is not my Lord Protector's interest built upon this very foundation.

I would have us not part with our privileges. I hope his Highness will not question it. It is neither for his service nor ours to decline our jurisdiction. If you be not a judicatory, you are nothing. If the apprentices of London should come and pull you out of your chair, shall not this House punish them?

It is not practicable nor good, neither, for a Parliament to make laws and execute them themselves; yet they may do it, if they please. These are *Arcana Republicæ*. What is above the jurisdiction of a Parliament? Will you refer it to a multitude? I would not have a people know their own strength. I would not have it put upon a Parliament to own their strength. I hope it is a jurisdiction that will not be questioned. If you must be restrained and circumscribed, it were good it were known by whom. The less these matters are meddled in, the better.

May not any ordinary court of justice proceed to pillory and whipping. Was not this all the issue of divinity lectures for twelve days together about this business. His Highness and we, by God's blessing, may, if we agree in a unity, do many things for the good of the people. If we go about to dispute jurisdictions, I am equally tender on both sides. If we fall once a quarrelling, and debating jurisdiction, haply some things may be done by his Highness and the council, that it would not be well taken, if we should go about to dispute the jurisdiction; some ordinances passed that are not so clear. We must compare things with things.

If we begin this debate, and lay open our jurisdiction, we may know when we begin, but not where we shall end. Though this happen upon the account of this fellow, yet it may extend to civil matters of the highest concernment. As I would not restrain the power of Parliament, no more would

I question other jurisdictions. It may be the great hope of your enemies to have this division amongst us. It hath pleased God to bless us with a good and a tender supreme magistrate; but there may a king arise in Egypt that knows not Joseph. It is dangerous to lay open these jurisdictions.

The late king cited statutes, but you declared them inapplicable in the case of the commission of array.* Divers other precedents may be found out, even in modern times. I would have a Committee appointed to examine precedents, and prepare an answer to the letter. I doubt not but he will be satisfied with it, without further arguing jurisdictions on either side. It is a dangerous thing to enter upon. I hope we shall agree in unity.

Mr. Bampfield. I would have us lay this debate aside, for I fear a debate of jurisdictions will be of no good consequence. If we examine precedents, it will but fasten the debate. Haply, something may, in this debate, be brought under examination on the other side. If it should be asked, by what law the *recognition* was placed upon this door last Parliament,† by what law were decimations or the late monthly tax laid, how would the council answer this? I wish we

* In 1642. "These Commissions," says *Whitlock*, "were declared by the Parliament to be against law, and the actors in them to be betrayers of the subjects' liberty."

† September 12, 1654, immediately after a speech to the members, by the Protector, in which he told them that he was necessitated to appoint a test, or recognition of the government, which was to be signed by them, before they went any more into the House. The recognition was in these words.

"'I do hereby freely promise and engage myself to be true and faithful to the Lord Protector, and the Commonwealth of England, Scotland, and Ireland, and shall not (according to the indenture whereby I am returned to serve in this present Parliament) propose, or give any consent to alter the government, as it is settled in one single person and a Parliament.'

"This being ingrossed in parchment, was placed on a table near the House door, for the members to peruse and sign it; and about 130 of them subscribed it, and took their places; and the House adjourned for one day, to give time for the rest to sign it." The Parliament resolved, September 18, "that all persons returned, or who shall be returned to

knew upon what bottom we are. I should humbly pray, that before you settle your jurisdiction, you will settle your constitution. It was told you from the bar, by a noble lord, that none that sit here may sit in the next Parliament. It is very likely, while the council are judges of your members.* It is a great trust, and I hope they will improve it to the best advantage of the nation. If they should except against all the members but Scotch and Irish members, sixty makes a Parliament; and if haply, sixty should not be allowed of, how then would there be a Parliament at all? I desire this may be first cleared, as to your constitution.

Lord Broghill. I was not at this debate; yet I reverence your judgment, that we have done as a Parliament. I am not for answering his Highness's letter with another question, as the last gentleman moved, but to answer it as to the matter. Nor am I for the other way offered, to answer him by precedents done in the late king's time, in the differences between the Parliament and him. He was then a declared enemy. My Lord Protector is your declared friend, to whom, by your constitution, you are united. I would have an answer prepared only from such precedents as were, when both constitutions were in peace and unity.

Colonel Sydenham. We live as Parliament men but for a time, but we live as Englishmen always. I would not have us be so tender of the privilege of Parliament, as to forget the liberties of Englishmen. We ought to walk *legibus, non exemplis.* Precedents are not to be followed at all times. The Long Parliament had more need to resume their power than I hope we have. Then was war, but we are now at peace. I humbly lay it to the heart of every gentleman here, if the case do not much differ. I appeal to every man here.

We are now under another constitution than formerly. That objection is easily answered. If every county should

serve in this present Parliament, shall, (before they be admitted to sit in this House) subscribe the recognition." *Whitlock.* See *Parl. Hist.* xx. 369—371.

* See *supra*, p. 262, *note* †.

choose two members, and every borough their burgesses, as formerly, should those thus chosen sit here as a Parliament, though they take the oath of allegiance and supremacy? But to answer one question by another is neither logical nor just, nor honourable to answer this letter so.

I grant this House has a judicial power, as to judge of your own members, or to judge of appeals from inferior Courts, for you are the supreme jurisdiction But to send for men up out of the country, and to judge them without a law, what encroachment is this upon the liberties of the people!

My Lord Protector is under an oath, to maintain the laws, and all the articles of the Government. Is not he then to look so far to the good and safety of the people as to see that no man be sentenced but by those laws, not without or against them? What an intrenchment and incroachment may be upon the people's safety, if we judge of things here by a positive power, without a law formerly made. Who can tell what kind of Parliaments may succeed? To try offences *ex post facto* was never a * liberty neither in parliament, king, or protector.

We have not a power here to do what we please. There is something in the people which they always reserve to themselves, as that of their trial *per pares*, &c. I speak of a judgment beginning and ending here.

I offer not this to the end that the judgment might be receded from, but that the good and tender people of this nation may be provided for, for the future, that it may not be drawn into precedent, to the prejudice of the good people of the nation. To this purpose I would have a Committee to frame such an answer, to give his Highness satisfaction that such a thing shall not be drawn into precedent. I am not of opinion that the constitution is the same as was the Long Parliament. We are now upon another bottom and foundation than former Parliaments were, much differing in substance and circumstances too.

Sir William Strickland. I doubt not but we shall be able

* Justifiable," or a similar word, is probably here omitted.

to make it out that we had a jurisdiction to do what we did. If there be not a judicial power in Parliament, I know not what principles are. I hope we have lost none of our privileges. I never feared, till the Spanish enemy occasioned the questioning of our jurisdiction,* that it should have been disputed. I am sorry to hear our privileges argued, or that it is urged that his Highness is under such an oath as to enter upon such a dispute. We have holden up our hands to assert the privileges of Parliament. I hope the one oath shall not clash with another. I like not to hear the liberty of the people opposed to the privilege of Parliament; I understand not that kind of argument: I never heard those opposed to one another before. I hope it will not be offered, as I take it we have all the power that was in the House of Lords, now in this Parliament. Surely we have lost nothing by having that power added to us, nor are we less, by having the nation of Scotland united to us. The essence of Parliament cannot be diminished by any such alteration. I desire a Committee would prepare an answer to present to his Highness, on this business.

Lord Whitlock. I am not for entering into dispute upon your jurisdiction. No doubt but precedents are, in all ages, of the judicial power of Parliaments. I know nothing in the Instrument of Government, to restrain that jurisdiction. In the case of Thorp, it was said he made the king forswear himself, and therefore it was adjudged treason and the like. Sometimes the House of Lords did it with the king, sometimes with the Commons, sometimes alone. I would have these precedents as little made use of as may be. If there be a defect of a law, let a law be made, that posterity may not be surprised. But, to the answer of the letter, for I like not disputing jurisdictions, I desire you would appoint a committee to consider of a way to give an answer to his Highness's letter, and report their opinion.

Lord Strickland. I hope you will not ramble into former

* It appears by the *Journals*, that there were several messages from the Protector, and Debates on the Spanish war, before the date of this MS. This Speaker probably refers to some question of jurisdiction raised on some one of these occasions.

precedents, nor fall to dispute jurisdictions. I doubt it will take up too much of your time. To save your time, I would have a Committee to sum up the grounds and reasons of your proceedings, and present it to his Highness. If we have done well, he will be satisfied with it; if not, he will propound some other way, to prevent the inconvenience for the future.

Mr. Trevor. Such an answer should be prepared, as that we may both assert our own jurisdiction and give his Highness satisfaction too, and preserve a good understanding amongst us. It may occasion a conference. I would have a Committee appointed to prepare such a civil answer.

Mr. Nathaniel Bacon. Such an answer may easily be prepared, by the advice of a Committee. We are, in our debates, like the Tartars, who fight flying, and come to no fixed point whereon to ground a debate. I doubt not but his Highness will be satisfied, when you tell him how that, finding such a horrid blasphemer, and a grand impostor and seducer, in the nation, by power of Parliament you proceeded as you have done to punish him.

Lord Chief Justice. I am sorry this debate happens, upon such a subject. Nobody can deny but there is a judicial power in Parliament, as well *ad extra* as *ad intra.* I find nothing in the Instrument against it. *Ad intra*, by the very law of nature; to preserve ourselves, our members, from all violence and restraint, this being essential to your very being and preservation of a Parliament. They have also a power *ad extra*, in some cases. Lord Beaumont was fined for some miscarriage in his coming before the Parliament. Sometimes the three constitutions together have joined in a judgment; sometimes the King and House of Lords together; sometimes Lords and Commons together; sometimes the House of Lords alone; in one case the House of Commons, but it was disputed. In Spencer's case,* they proceeded in a judicial way. Trial by juries have been before them. Sometimes Parliaments have asserted their own judgments, sometimes have

* In 1327. See *Parl. Hist.* i. 209.

receded from their judgments, sometimes succeeding Parliaments have repealed judgments of former Parliaments, as where a Judge was hanged by judgment of the House of Lords, which the next Parliament repealed.

In the case of Floyd,* for abusing the Queen of Bohemia, the Commons alone adjudged him to ride backwards on horseback. It was questioned, but not vacated. If you wade into precedents, you will find variety of judgments. Parliaments in legislative power have authority without bounds, power over the lives and liberties of the people; but the judicial power is not boundless, for this is against the natural power of a court of justice, this is a court of will and power. There must be rules to all judicial power. It confounds the legislative and judicatory. You invert all the rules of proceeding of all courts of justice, by this means. Here is no exception against judge, witnesses, or jury; no disputing your authority.

We are now to consider the oath that his Highness is under, to protect the lives and liberties of the people. But if we proceed in this manner, judicially, against any man, as we please, we divest him of that power, and take the sole power of judging men, without law, or against law. It is true, such things have been done by Parliaments alone, but never without great regret. Let us consider our constitution. We are a Parliament of three nations: can any of us tell what was the judicial power of a Parliament of Scotland, or of the Parliament of Ireland? I would have us to let the people know that we are not met here to assert any jurisdiction of our own above what we ought to have. It is said we may proceed to a slight punishment, but not to life, or member, or estates, by the judicial power. I cannot submit this in all cases, but where we have a known law for it, I shall not advise to recede from our judgment, but provide against it for the future; for it may be of very dangerous consequence to Englishmen to be ruled by a court of will. And, by the same account, all we that sit here may be questioned in succeeding Parlia-

* Or Lloyd. See *supra*, p. 250 note.

ments for what we have done in this. I would have a Committee appointed, to consider of an answer to be given to his Highness, to view former precedents, and report their opinions to the House; and I doubt not but it will satisfy his Highness.

The Master of the Rolls. Consider our constitution first, before we debate this business further. I take us to be upon the same foundation and bottom that we were before. Parliaments, for all these alterations, are to be understood as the same in essence. There is *consuetudo parliamenti*, three things concurring to make a Parliament, three actions.

1. The writ of the supreme magistrate to call them.

2. The election of the people.

3. The coming of the members together. Then the laws come to connect them together in a body; and this gives them a threefold authority.

1. To inform; as to say, we suspect such a person of such a crime, as a grand jury.

2. A judicial power, a power to judge; though, without the House, you cannot judge but *per pares*. You have made Acts in this, against that,* but I shall say nothing, &c. But of the judicial power, it is clear that you have power to judge any thing, though there be not a law for it in present being. Surely it is otherwise with us,† that are the law-givers to apply remedies as occasions offer themselves.

3. The legislative power, which that noble Lord has spoken fully to: I shall need say nothing to that. If you consider yourselves as a new constitution, a new creation, I am loth to speak to this: it is a nice point. I take this Parliament to be upon the same foundation. It only differs in circumstances: it is not the adding or taking away your members that does increase or lessen your jurisdiction. First abbots, then bishops, then the House of Lords were taken

* Here, perhaps, may be intended the House of Lords, and in the following sentence, there may be reference to the vote of the Commons, in 1649, declaring that House useless.

† Than with a Court of Justice, whose office is only *ministerial*, here, probably, understood.

away, but the Parliament remains still. The Instrument says nothing what kind of Parliament you shall be. You have the *consuetudines Parliamenti.* I am confident it was never in his Highness's purpose to make you a new creation. If so, I know not where we are. A charter confirmed, makes it not a new-created charter. I shall not mention former precedents to you; for sometimes the King, sometimes the House of Lords, sometimes Commons, took this judicial power upon them. Truth is, those that could catch it had it. But in our modern precedents, things have been otherwise established. The privilege of Parliament has been asserted and sealed with the blood of many thousands.

I desire not to be misunderstood in what I say. I profess I mean well in all I say, not to make the breach the wider. I wish these jurisdictions had not been questioned on either side. It is an ill omen. I hope his Highness would be satisfied, if you should but tell him what you have done by your judicial power, and against whom.

Mr. Attorney-General. If I thought this were a sufficient answer, for the good of the people, I should not be troublesome to you in it. It has been said, *boni juris est ampliare jurisdictionem.* When the House of Peers were dissolved, they were dissolved. The power was not reserved, but the power ceased with the constitution.

I remember a case in the Long Parliament. It was Alderman Crooke's and the East India Company's case. The House of Lords made an order to reverse a decree in Chancery; but this being done without the House of Commons, thereupon we granted an Injunction to confirm the decree. It is said, we have a nation amongst us now, that was never before. Know we what the judicial power of a Parliament in Scotland was? It is fit all people should know how you are settled or constituted now. I believe it will be easy enough to find a precedent, to justify any thing you shall desire to do; but I would not have us to pursue those precedents. It were better for Englishmen to be guided by cer-

tain rules, than by any precedents. If the laws be short, or defective, let them be amended. But they that plead for the liberty of Englishmen are no enemies to the privilege of Parliament, I hope. It is always best and safest for a Commonwealth to be governed by a known law, that they may know when and what they transgress. I would have a Committee appointed, to prepare an answer to his Highness's letter, and to satisfy him what, and how, you have proceeded in this business, with your carefulness not to draw it into precedent.

Lord Lambert. To appoint a Committee to prepare your answer will not be for your service, till your sense be further understood. It is a sure rule, *salus populi* is *suprema lex.* A right understanding between his Highness and the Parliament is certainly the *salus populi.* I hope it will also be thought *suprema lex.* The Council are, upon all occasions, reflected upon. Some of us* wish that we might serve you in any other place, with greater hazard of our lives. That of the Recognition,† and those other things urged, come not at all to this case. For that of keeping out the members, if such course had not been taken, consider what a Parliament you might have had. If a Parliament should be chosen according to the general spirit and temper of the nation, and if there should not be a check upon such election,‡ those may creep into this House, who may come to sit as our judges for all we have done in this Parliament, or at any other time or place. Having no rules to circumscribe Parliaments, the power must be trusted in some person, and fittest in the supreme magistrate.

I cannot understand what is meant by this judicial power. If it have the same boundless extent that the legislative has, nobody can tell how far it may lead, if there be no negative upon it. I shall not bring it to the case of this fellow, lest it may seem to plead too far for liberty of conscience. But admit a Parliament in after-ages should be called, suit-

* He was one of the Protector's Council. † See *supra*, p. 273.

‡ The necessity of such a check is a very-extraordinary admission.

able to the temper of the people, that should bring those to your bar to be tried that have faithfully served you, arraigning your sequestrators or commissioners, or any that have acted by your authority.

We cannot tell what kind of Parliaments other ages may produce. We ought to take care to leave things certain, and not expose the people's liberties to an arbitrary power. I would have it referred to a Committee to consult former records and precedents; but first, that you should direct them in a way that may rather be a saving to the jurisdiction of Parliament, and satisfaction to his Highness. But, in regard you are not yet ripe for a question, that you would adjourn.

Mr. Robinson. We shall spend all our time in private business. I desire you would go on to some public business, or otherwise to adjourn for two or three months.

Resolved, that this debate be adjourned till Friday.

In the Duchy Chamber sat the Committee of Trade, but we sat till after two; so few Committees.

Wednesday, December 31, 1656.

A bailiff brought to the bar for arresting Captain Mason's servant, who, upon his submission,* was acquitted.

A Bill for settling lands in Ireland upon Captain Blackwell was read the second time and committed.

Mr. Robinson, Mr. Bond and *Colonel Markham* were against it, for it seems his adventure was not above 2,000*l.* and the land is now worth 20,000*l.* It will be worth 60,000*l.* for so it was in the time of peace, being great quantities near Dublin.

This day his Highness and the Council kept a private fast.

* "And paying his fees, and attending Captain Mason, when he comes to town, and making his submission to him." *Journals.*

(Whitehall, December —) Ordered that Sir Henry Vane,* and Mr. Feak be set at liberty.)

Major-General Howard. Go to the order of the day, which is for the petitions, that they may be read in order; and the tenants of Westminster's petition, which is first in order.

Mr. Robinson called for the calling of the House.

Mr. Speaker. By what book would you call them, by the book that had all the returns, or by the book of those that were approved.†

Colonel Purefoy would defer calling them for a week; for he perceived many that intend to be gone as soon as called.

Mr. Bampfield. Call them now, lest they think you will never call them.

Major Beake was against calling them at all.

Sir John Reynolds. Call both this day and a week hence.

Mr. Nathaniel Bacon. You ought to call them twice.

Defaulters.

Bedfordshire. John Harvey.

* He had put forth a pamphlet, entitled, "A Healing Question Propounded and Resolved, upon occasion of the late Public and Seasonable Call to Humiliation, in order to Love and Union among the Honest Party." For this he was summoned to appear before the council, 1656.

"The paper," says *Ludlow,* "contained the state of our controversy with the king, the present deviation from that cause for which we engaged, and the means to unite all parties in attaining the accomplishment of it." Sir Henry did not disown the publication; and refused "to give security not to act against Cromwell." Appearing "again before the council, he delivered into Cromwell's own hand another paper, containing the reasons of his disapproving the present usurpation, and a friendly advice to him to return to his duty." In the sequel, "he was sent prisoner to Carisbrook Castle." *Memoirs,* ii. 576, 577.

"Sir Henry Vane arrived at London, in a short time after, where he met with another kind of persecution. Cromwell privately encouraged some of the army to take possession of certain Forest Walks belonging to Sir Henry, near the castle of Raby, and also gave order to the Attorney-general, on pretence of a flaw in his title to a great part of his estate, to present a Bill against him in the Exchequer. Yet, at the same time, he was privately informed that he should be freed from this, or any other inquisition, and have whatever else he would desire, in case he would comply with the present authority." *Ibid.* p. 591.

† See *supra,* p. 262 *note* ‡.

Berkshire. Captain John Dunch.* Commands a militia troop.

Cambridgeshire. Colonel Castle. Sick in town. Lord Richard Cromwell: sick.

Cheshire. Sir George Booth.† Mr. Leigh. Desperately ill, gone into the country.

Cornwall. John St. Aubin, Esq. Anthony Nicholl, Esq. is sheriff, and tied to attend.

Mr. Robinson said, none ought to be sheriff without the House's leave.

Mr. Richard Carter, Mr. John Fox.

Devonshire. Mr. Arthur Upton.

Mr. Reynell said he was afraid of the gout, and went while he could go or stand.

Resolved, that Mr. Arthur Upton be excused.

Colonel Shapcot. His wife has been sick.

Per Colonel Gorges and *Major-General Disbrowe,*

Resolved, that Colonel Shapcot be excused.

Mr. Robinson proposed that he might be excused till term, then he will attend.

Major Samuel Searle. Absent.

Dorsetshire. Colonel Fitzjames, Excused, not well.

Essex. Sir Thomas Honeywood. Was here yesterday. Mr. Dudley Templer: gone down sick.

Gloucestershire. Mr. William Neast. His wife and three children sick. Thomas Pury, jun.

Captain John Stone. Sick all the Parliament.

Herefordshire. Bennet Hoskins. Colonel Rogers. Sent down by special command of his Highness.

Hertfordshire. Colonel Cox. Excused, his son dead.

Huntingdonshire. General Mountagu. Long at sea: takes fresh air.

* "Related to the Protector by marriage," *Parl. Hist.* xxi. 3. See Noble's "Memoirs of the Protectoral House of *Cromwell*," (1787) ii. 443. Edmund, a cousin of John Dunch, was made a peer by the Protector, in 1658. See a *fac-simile* of his patent. *Ibid.* p. 162.

† In 1659 he appeared in arms for the king, was defeated by Lambert, and imprisoned in the Tower.

Kent. Mr. Oxendon. Excused: sick. Mr. Baron Parker: not well. Gabriel Livesey.

Lancashire. Colonel Richard Standish. Did attend, but out of temper, and went down, speedily to return.

Leicestershire. Colonel Beaumont. Mr. Thomas Pochen.

Major-General Whalley. They have attended hitherto.

Lincolnshire. Mr. Peart, Mr. William Ellis, Mr. William Wray. Absent.

Middlesex. Sir William Robarts and Colonel Grosvenor. Excused.

Mr. Carey. Sir John Barkstead.

Norfolk. Colonel Wilton. His daughter very sick: excused.

Per Mr. Church, Sir John Hobart, and *Major-General Skippon,*

Colonel Wood. Excused: sick.

Per Sir Gilbert Pickering and *Lord Claypoole,*

Colonel Charles George Cock. His wife sick of small pox.

Northamptonshire. Mr. Thomas Crew, Francis St. John, Francis Hervey.

Northumberland. Mr. William Fenwick.

Per Mr. Speaker,

Resolved, that Mr. William Fenwick be excused, and Mr. Robert Fenwick, who said his father was aged, and a marriage was to be in that family, and that he will return speedily.

Nottinghamshire. Colonel James Chadwick.

Per Major-General Whalley,

Recorder of several places, and gone down to serve.

Mr. Robinson. Those towns ought to have considered that before.

Resolved, that Colonel Chadwick be excused.

Oxfordshire. Mr. Miles Fleetwood.

Resolved, that Mr. Miles Fleetwood be excused.

Rutlandshire. Mr. William Shield. His wife is very ill, and he hath hitherto attended close.

Per Major-General Boteler and *Mr. Puller,*

Resolved, that he be excused.

Shropshire. Mr. Waring. He is chosen Sheriff, and commanded away.

Mr. Ashe, Jun. and *Lord Strickland* desired his excuse.

Sir William Strickland. This is the worst excuse in the world. They are tied to attend, in the county, and in the Parliament.

Mr. Attorney-General. It is a bad word in Parliament to say any member was commanded away. None ought to command here without your leave. None could be Mayor of any corporation, without your leave. It was the Lord Mayor of London's case. This is your privilege, and ought not to be parted with.

Major-General Goffe and *Sir Thomas Wroth.* None ought to command here, without your leave.

Lord Fleetwood. It was not done through any breach of your privilege; but from want of asking leave.

Mr. Speaker. Excuse him, and enter it upon your book, by leave now asked.

Colonel Matthews moved, that Sir John Coppleston and Mr. Nicholl might be excused upon the same terms. Resolved.

Colonel Crompton has constantly attended hitherto.

Resolved, that Colonel Crompton be excused.

Somersetshire. Mr. Luttrell. His wife sick.

Resolved, that he be excused.

Mr. John Ashe has the gout.

Resolved, to excuse him.

Sir John Harrington. Is ill himself, and his wife is ill.

Mr. Robinson. If every man that has an ill wife, should be excused, it would go far, haply, in this House, for excuse.

Southamptonshire. Mr. Robert Wallop: his sister sick. Mr. Cole.

Resolved, that they be excused.

Mr. Cobb.

Resolved, not to be excused.

Mr. Hildesley, Sheriff of Southampton.

Per Colonel White,

Desires he may be excused, as before.

Mr. Robinson and *Sir William Strickland.* It is time to make some of them examples, that take any employment.

Resolved, that Mr. Hildesley be excused.

Suffolk. Mr. Clarke.

Mr. Hussey. Mr. Clarke had the misfortune of a vote, yet, having urgent occasions, went down.

Resolved, that Mr. Clarke be excused.

Mr. Brewster.

Resolved, to excuse him. It seems he acquainted Mr. Robinson with his going.

Surrey. Sir Richard Onslow: not well.

Resolved, that he be excused.

Mr. Onslow the younger, has small pox in his family; so dare not come up to sit here.

Resolved, that Mr. Onslow be excused.

Resolved, that Mr. Drake be excused. He has attended close.

Sussex. Sir John Pelham, Bart., Mr. Stapeley

Resolved, that Mr. Stapeley be not excused.

Sir Thomas Parker.

Resolved, not to excuse him.

Warwickshire. Sir Roger Burgoyne.

Resolved, to excuse him. He came in just as the vote passed.

Mr. Peyto.

Resolved, not to excuse him.

Major-General Howard stood up unsatisfied. The House divided.

Sir Christopher Pack and Colonel Rouse, Tellers for *Noes:* 89 sat.

Colonel Bingham and Major-General Howard, Tellers for *Yeas:* 83 went out.*

Worcestershire. Sir Thomas Rouse. Not well in body nor mind.

Per Major-General Bridge,

Resolved, that he be excused.

Mr. Lechmore.

Per Lord Whitlock, Sir Lislebone Long, and *Mr. Bampfield,*

* So in *Journals*. Mr. Peyto is the only defaulter there named.

He has attended here in the vacation, as well as term. His wife is sick, &c.

Colonel Hewitson and *Mr. Robinson.* Put the question for his excuse, provided he will be here in term time. It seems he will be here suddenly.

The Master of the Rolls. There is a difference between an ill wife, and a sick wife. It seems his wife is sick.

Resolved, that Mr. Lechmore be excused.

Resolved, that Mr. Edmund Giles be excused.

Wilts. Sir Walter St. John. Mr. Stone.

Resolved, that Mr. Stone be excused.

Yorkshire. Colonel Bethel. Excused, because not well.

Wales, Brecon. Mr. Evan Lewis. Commands a militia troop. He desires he may be excused.

Resolved, that he be not excused.

Carmarthen. Colonel Dawkins. Here yesterday.

Resolved, to excuse him.

Lord Claypoole. Here the other day.

Resolved, that he be excused.

Radnor. Mr. Gwynn. Has kept his chamber six months. Excused.

Ireland. Sir Hardress Waller.

Per Major Morgan,

He cannot be spared from his service in Ireland.

Resolved, to excuse him by leave now given.

Per Major Morgan,

Major Redman and Colonel Sadler are absent upon the same account.

Colonel Cooper. Except Sir Hardress Waller and Sir Charles Coot, all may come.

Mr. Newburgh. Is no member of the army, but sick.

Per Major Aston,

To excuse him.

Colonel Ingoldsby.

Resolved, to excuse him by leave now given.

Colonel Daniel Abbott.

Resolved, that he be excused upon leave.

Sir Robert King. Is sick, not able to sit here.

Resolved, that he be excused.

Resolved, that Colonel Sadler and Major Redman be excused, upon leave now asked.

Resolved, that Sir Charles Coot, upon leave now asked, be excused.

Lord Whitlock. It will not look well upon your books to say, "upon leave now asked." It is like an offence *ex post facto.*

Mr. Robinson. You should write sense upon your books. This is like asking leave to go out of town yesterday.

Resolved, that Sir Thomas Honywood and Lord Claypoole be excused; being come in just now.

Captain Baynes and *Sir William Strickland.* Not only make it a formality to call the House, but lay a penalty upon such as have made the default, and lay all others to attend under a penalty. Enlarge the time for a fortnight.

Sir Thomas Wroth. Call over the names of such as you have not excused, that we may then judge.

Captain Baynes offered 20*l.* fine to be set upon defaulters.

Mr. Robinson. Reserve your fine, and appoint a short day for the defaulters to appear; else to be fined.

Colonel White. Set a greater fine upon the sullen party.

Resolved, that fourteen days be given to appear.

Major-General Disbrowe and *Lord Strickland.* If you set too great a fine they will choose rather not to come in, than pay too great a fine. Let it be 10*l.* rather.

Mr. Speaker. The honour of Parliament is as well to be respected as the profit. You must not set a small fine. I find in a Parliament in Queen Mary's time, a fine of 20*l.* was laid upon the defaulters.

Resolved, that those that have made default may be called this day fortnight, and those that do not appear to pay 20*l.** a piece, before they be admitted, and the fines to be paid in to the Serjeant-at-arms.

* So in the *Journals.* In 1626, the penalty was 10*l.* In 1664, it was 10*l.* for every Knight of a Shire, and 5*l.* for every Citizen Burgess, or Baron of a Cinque Port.

Colonel Matthews moved, that the names of members upon second elections might be returned to the clerk.

Captain Baynes moved, that no member may depart without leave, under a penalty.* Otherwise many will be gone.

Sir Christopher Pack seconded that motion, that there might be a stop to all members going away without leave.

Mr. Godfrey. Your order was to call the House, in general. I desire that the clerk of the Commonwealth may return all the names.† It is said you are judges of your members; how if you have not a power, *ad infra*, to preserve yourselves? It was told you by a noble lord, that the law of nature enjoins self-preservation. That liberty is given to every creature. I humbly move that you would take an account of your own members, and know how, and why, they are detained. It is the common interest of the nation, and the honour of your house. Haply I may speak with prejudice. Some members can neither speak, nor be silent, present, nor absent, without prejudice and reflections. I know nothing that is judicially before you, against the members. In point of conscience, I am tied to speak this. I desire you would appoint a day to call those members.

Major-General Whalley. It is against the orders of the House, to make any new motion at this time of the day.

Mr. Bampfield. It is no new business, but in order to your day's work, that all your members should be called. I desire to second that motion; otherwise that you would adjourn the debate to another day, till when I shall reserve my judgment in the business.

Mr. Thistlethwaite, (who came in to-day.) This motion has been firsted and seconded. I desire to third it. It is a business of universal concernment, and settlement to the nation, and the expectation of many, that the foundation of Parliament should be established, which cannot be done better

* 1620. Ordered, that no member of this House shall go out of town without open motion and licence in the House after nine o'clock.

† See *supra*, p.262, *note* ‡.

than by inquiring into your members, and upon what account they are detained.

Mr. Meredith stood up to speak to the same purpose, but the Speaker, being sick of the motion, left the chair.

In the Inner Court of Wards sate the Committee for the City of London Petition.

In the Speaker's chamber, sat the Committee for Bibles.

In the Star Chamber, the Committee for Hospitals near Leicester.*

In the Army Chamber till after seven, sat the Committee for Courts at York,† Major-General Howard and others.

Thursday, January 1, 1656-7.

The House appointed to-morrow sennight, to be set apart for a day of humiliation to be kept in the House; and ordered that Dr. Reynolds, Mr. Barker,† and Mr. Caryl, be desired to be assisting to the carrying on the work of that day of humiliation in the house.

Per Mr. Bond.

Resolved, that Colonel Fitz-James and others be added to the Committee for public faith.

Captain Baynes moved, that one afternoon in a week might be only for Committees for private business, as well as one forenoon. All public businesses are obstructed.

Lord Strickland. Shut out private business for fourteen days.

The Master of the Rolls. Private business should not be wholly laid aside. We must relieve those that cannot be relieved elsewhere. There may be a provision for public business too, and not wholly reject private business.

Mr. Bond. If you do not relieve some, and those that have faithfully served you, they must starve. I would have no private business offered after ten.

* See *supra*, p. 82. † See *supra*, p. 17 *note*.

Mr. Attorney-General. The old way was, to appoint a Committee to prepare private business for the House.

Lord Lambert and *Lord Fiennes.* Appoint Saturday, only for private business.

Colonel Clarke. Exclude private business for a month.

The reason why the House is not so full in a morning is, because they know nothing but private business is to be heard till ten.

Mr. Butler. Put off private business for fourteen days. I have a petition in my pocket, touching a member of this House, but I shall keep it there.

Mr. Moody. We have more business than we can do in twelve months. They will overwhelm us. Do they mean to drown us with business?

Lord Broghill conceived the reason why members will not come in a morning is, because it is private business.

Major-General Howard. While you are disputing about excluding all private business, I doubt you will have no time for any business; as this day.

Major-General Disbrowe. Lay a penalty of 12*d.* upon every member that shall come in after nine o'clock, and allow four days for private business.

Resolved, that Tuesday, Wednesday, Thursday, and Friday, be for dispatch of public business, and no private business to be admitted upon those days.

Per Colonel White and *Lord Broghill.*

Resolved, that no Committees do sit upon those days upon private business.

Captain Baynes. An additional Bill for the better improvement and advancing the receipts of the excise and new imposts, was this day read the first time,* wherein was the branch for 12*d.* a head upon private families.

Mr. Bampfield. Such a Bill was never brought into a Parliament. You give leave to break open all doors and cellars, and to imprison men's persons during pleasure.

* So in the *Journals.* The introduction of an excise, was one of the popular charges against the Long Parliament.

The poll-money is a new thing; no order for it of this House. It is an incredible sum, never heard of. It may amount to two millions for aught I know. The people will be set all in an uproar. They will bless those that left the Parliament, and curse us that sit here. We are a broken interest. If any thing in the world will make a Parliament stink in the nostrils of the nation, it will make us odious. There have been other ways found out to levy monies for the war. Let it not fall upon us. It is a most cruel and oppressive Bill. I desire it may be thrown out. The poverty of the nation is known.

Mr. Attorney-General. This may be made a good Bill. I had rather it should lie upon the excise, than upon assessments. Here a man has something for his monies. In assessments he has nothing for his monies. This gentleman speaks unseasonably to it, at this time.

The Master of the Rolls. It is a dangerous thing for us to give an arbitrary power over men's persons, and goods, and liberties; to imprison men by any private person. The power of Parliament is very great, but we must do things according to justice. Let us not deliver up the liberties of the people, but know how first. Here is no time limited in this Bill, how long the tax shall continue. Haply, I may not be here at the second reading, and therefore speak now to it. However we may deceive ourselves, we are not so clear in the opinion of the nation; and we ought to be tender in laying a tax upon them.

Mr. Robinson. I like not to put an arbitrary power in a person, much less in inferior officers, to imprison men and seize their goods, and enter into their houses. We shall have a muster-master come into our houses every quarter, to disturb us and reckon over our families. Yet let it have a second reading.

Captain Baynes. We have taken a great deal of pains at this Committee to serve you, and we hope nothing is in the Bill but what we had your order for. The rates upon commodities are no more than was set in the Long Parliament. For that of the poll, at 12*d.* per head, it is in lieu of excise

upon private families. Monies must be had for the wars. If any know a better expedient, it were good they would acquaint the House. We have endeavoured to serve you as faithfully as we could in it, without any ends, or respects at all.

Resolved, that this Bill be read the second time upon Tuesday.

Friday, January 2, 1656-7.

An Act for the Repeal of certain branches in an Act, intitled an Act touching corn and meal. Read the first time.

A Bill for the amendment of the highways. Read the second time.

Mr. Fowell, Mr. Downing, Mr. Robinson, Lord Strickland, Mr. Pickering, Mr. Attorney-General, Captain Lilburn, Lord Whitlock and others, excepted against the Bill, for several clauses in it, especially against that clause which appointed a surveyor-general of the highways.

Mr. Robinson said, it was a minister that undertook the project. He doubted his skill in it; wished he would look to his own ways; we could look to ours ourselves. The office would be better than his benefice. He would be higher than Archbishop of Canterbury, at least 10,000*l.*; erecting such an office was generally disliked.

Alderman Foot and *Mr. Bond*, moved to have that clause put to a question for the rejecting of it.

Mr. Speaker inclined, and was going to put it, but, to prevent further debate, the question was put to commit the Bill.

Resolved, that it be committed. All that come to have voices.

Colonel Fitz-James moved to add Sir Richard Onslow, though absent.

Mr. Speaker. It is my duty once a day to remind you of the business of the day, that is, an answer to the letter.

Several stood up to press other business.

Mr. Bampfield moved, that the Bill for the Lord's-day be read.

Colonel Matthews and *Colonel Rouse* seconded the motion.

Captain Baynes moved for the second reading of the Bill for Yorkshire cloths.

Mr. Lister offered a Report from the Committe for probate of wills.

Mr. Speaker inclining, he went on a little way in it, but was called down, in respect it was late, and not known how long the debate might last upon a report.

Mr. Speaker said, a Report ought to have preliminence of all Bills.

Mr. Bampfield affirmed a Report from a Grand Committee ought to precede all reports, much more a report from a Grand Committee of religion, of whom you had heard nothing these three or four months. He had waited above a month to report it, and desired this day the reading of it. It seemed to be conceded, what Mr. Bampfield affirmed.

Colonel Clarke. In respect of your being ill at ease, and for that upon your preservation depends much of the forwarding of our business, I desire you would now adjourn till Monday morning, that in the meantime, you may recover your health.

Mr. Baron Parker. I only stand up to second that motion, that, for your health's sake, you would adjourn till Monday.

Mr. Bacon. I stand up to third that motion. I desire you would put the question.

Still *Mr. Bampfield* and *Mr. Lister* pressed their Reports.

Lord Broghill. In respect of your health, I am not against adjourning till Monday, but I would have you appoint Tuesday to read the Bill for the Lord's-day. I hope you will not make a private business of it, and you have appointed Monday for nothing else but private business.

Resolved, that the Bill for the Lord's-day be read on Wednesday, it being considered that Tuesday is the Money dav

A Bill touching the exportation of fish, was read the second time.

It had no title, and a great many blanks for customs to be paid, so much for poor John,* and the like, &c.

Mr. Speaker said, there are a great many blanks but no brief. I think I must read the whole Bill, but, shortly, opened it and threw it from him.

Captain Hatsel and *Mr. Fowell*, urged that it was for the benefit of the nation, and advance of the fish trade, to give liberty for a time to export it, in regard it was much wanted in Spain, where our vessels could not come, and the Bill limited it to a time.

Resolved, that this Bill be committed to the Committee of Trade.

The motion to adjourn was taken up twice again.

Colonel Hewitson stood up to fix it. In regard our preservation depends much upon your health, I desire you would put that question.

Per Colonel Briscoe.

Resolved, that Captain Lilburn have leave to go into the country, for a month.

Resolved, that Sir Edward Herbert have leave to go into the country.

Resolved, that Colonel Ceely have leave to go into the country.

Resolved, that Judge Lawrence and Colonel Talbot be added to the Scotch Committee.

Thus was the business of the day jostled out, and nobody said a word to it. I hear it will never be mentioned again; if it be, I dread the consequence. *Absit.*

I writ nothing this day, in the House. A friend told me (Captain Lilburn) that it would be taken notice of. He heard it much talked on, at table, the day before. Colonel ——† told me, a week since, that Lu: R:‡ had a purpose to take me down; but he wished me not to forbear, nor yet to take him off, for he was apt to forget.

* The name of a fish. † Blank in MS. ‡ Thus in MS.

Resolved, that this House do adjourn itself till Monday morning at eight.

This afternoon the Grand Committee for Religion should have met; but could not make up the number. We dined in Fish-street, with Captain Atkins and Mr. Booth: cost us nothing, them 20*s.*; coach,* 3*s.*

Saturday, January 3, 1656-7.

This House was this day adjourned, in respect of Mr. Speaker's indisposition of body. I dined with Colonel Fothergill.

A great Committee sat in the Painted Chamber upon Mr. Scot's petition, wherein he craved to be divorced from a bad wife, and that her children might not inherit his lands, being begotten in adultery.

The Committee were a long time in debate before they entered upon the merit of the case, whether a Committee of Parliament could sit, the House being adjourned.

The Master of the Rolls, Colonel Carter, and *Mr. Bodurda,* questioned it.

Mr. Bond and *Mr. Robinson* said that they frequently sat in the Long Parliament, though Parliament were adjourned.

Mr. Bodurda said, he never sat in the Long Parliament, but he had sometimes a desire to look into Journals of Parliament, and found that, in all adjournments of the House, there was always a particular saving to Committees.

This debate held a long time, and it was urged that the actions of the Long Parliament were not, in all things, to be imitated. They were very regular, in all things, in the beginning; but afterwards, and towards the latter end, necessity prompted them, in regard of the wars, &c. often to walk out of the road.

Divers other things were moved *pro* and *con;* but it was thought best to lay aside disputing upon the jurisdiction, and proceed to the matter.

* Hackney Coaches began to ply in 1626. In 1651, there was an *ordinance* for their regulation, limiting their number to 300.

The parties being called, the Lady Scot appeared not; and thereupon, the Committee were proceeding to judgment, in regard she was ordered expressly to give her answer that day.

Major-General Kelsey, and *Mr. Godfrey*, who had the chair, very much pressed that they would proceed to proof of the petition.

In the meantime a messenger came in and told the Committee that the lady was in the Court of Wards. She was called in, and her husband. She was heard by her counsel, Mr. Finch, who seemed implicitly to question the jurisdiction, reserved himself for matter of law till afterwards, and desired time to bring in an answer in writing, and further that Mr. Scot might allow her alimony, to vindicate her reputation, in her defence to the matters in the petition, which seemed to rip up the whole course of her life. It would be very chargeable to her to bring witnesses from all parts, and he, by law, ought to bear the charge, (it being allowed in all courts of justice), in regard it is likely to be the last time her husband shall be troubled with her, if the matters be proved as they are set forth in the petition. If she can vindicate herself, it ought to be his rejoicing as well as her's, and he will not grudge the charges.

Mr. Judico Sedgwick, one of the counsel for the husband, desired time to prove the petition, and agreed that, by the law, his client ought to give her alimony for her defence in this charge; and her counsel press it, that the Committee would demand the *quantum* of Mr. Scot. He was going to speak, (something, I believe, but simply,) but the Committee were not satisfied that they had any power to demand such a question, nor would they trouble themselves with the matter of alimony, nor report it to the House, but go to the matter; not doubting but the husband would freely give her something towards the defence of this suit.

The Committee went no further, but gave till this day sennight to the petitioner, to prove his petition, and then to hear counsel on both sides, and debate the whole matter. If one may judge of colours, she has a very bold face, but seemeth old. She was in black, and a long patch upon her forehead.

Monday, January 5, 1656-7.

Per Colonel Matthews.

A Bill for the disappropriating of the Rectory appropriate to Preston, in the county of Suffolk, and for the uniting and consolidating of the said rectory, and of the vicarage of the church of Preston aforesaid. Read the first time, and ordered to be read the second time on Saturday.

Sir John Thorrowgood came this day into the House, upon a new election for Lynne Regis, in the place of Major-General Disbrowe, who chose to serve for the county of Somerset.

A Bill for establishing, confirming, and settling of certain lands in Ireland upon Colonel Theophilus Jones, towards the satisfaction of his arrears. Read the first time.

There are 3000 acres of land near the town of Lucan, in the county of Dublin. They were the lands of William Chesfield, a delinquent, deceased.

Resolved, that this Bill be read a second time on Saturday next.

Colonel Fothergill stood up with purpose, I suppose, to press the tenants of Westminster's petition to be read: but he said nothing; nor would it have availed if he had, for at least five or six stood up with petitions, and could not be heard. I know not when they shall.

Colonel Bingham offered, if I would lay him five pieces to one, he would wager that the House would be up before I had writ out this book; offered without equivocation.

Serjeant Birkhead told me John Musgrave had been at his House on Saturday, railing two hours together against me and Major-General Howard. He showed him a petition of a mile long against me, and a letter to the House, which he intended to present shortly. There he had set forth the whole matter at Haberdasher's Hall, the depositions there, and before the Mayor of Appleby, and all that about Colonel Highmore. He ranted highly what he would do, but the Serjeant defended it as far as he could, and seemed to slight all.

Mr. Scobell came not to the House to-day. He fell very

ill on Saturday, and sent for the doctors. In danger of a pleurisy. I perceive he keeps his bed.

Colonel Sydenham. There is a report upon a petition, which has a long time waited to be presented to you. It does eminently concern the honour of this House to proceed to do justice upon it. It is the report upon the business of Rodney and Cole.* I pray hear it, for there cannot a greater grievance come before you.

Major-General Goffe. This business is a public concernment, and so ought not to come in a private business. It concerns the Parliament, publicly to redress grievances and abuses in courts of justice. It is more proper for another day. I have a short petition. I desire it may be read.

Lord Strickland and *Mr. Robinson.* Though it doth concern the Parliament, in a public respect, to redress grievances and abuses in courts of justice; yet this is a particular grievance, and proper for a day of private business. I desire the report may be heard.

Resolved, that the report touching Rodney and Cole, be now received.

Mr. Pedley reported the state of the matter of fact, upon the petition and appeal of George Rodney, and Sarah, his wife, plaintiffs, John Cole and others, defendants, from the Committee, to whom the same was referred, with the resolutions of the Committee thereon, which were read.

See their resolves, all agreed to by the House, except one, touching 200*l.* part of the principal monies, whether paid by Rodney or no; in regard the evidence was something suppository and supplemental, and the House not satisfied, as *vide infra,*† upon the debate; but in all the rest of the resolves, the House agreed with the Committee, as followeth.

1. First to the matter of fact, that the petitioner, George Rodney, entered into a statute of 1000*l.* for payment of 520*l.* at a day then to come, unto Alice Pawlett.

Resolved, that this House doth agree with the Committee.

* See *supra,* p. 19, *note.**

† P. 301, *note.*

2. And that, shortly after, the defendant John Cole married the said Alice, whereby he had an interest in the said debt. Afterwards, about the 21st of March, 1641, the said George Rodney, by the hands of one Mr. Glover, paid to one Thorne, the sum of 317*l.* 13*s.* by the appointment of the said John Cole, and to his use.*

Colonel White. I shall willingly agree to wave the debate and question upon the 200*l.* whether paid or not, because the House seems unsatisfied in it; but I cannot be of opinion that the judges have done their duty in this business, or that it is only error in judgment, and not of affection or corruption.

It is fit for a Parliament to inquire this, and not to pass it by, which is the way to make injustice be done hereafter. If they have done amiss, let them hear of it, and in no place so proper as this. I cannot in conscience sit here, and say nothing, to see such practices palliated in this House.

I would have it first considered, whether the commissioners have done their duty, and if *they* be in fault, that they may hear of it; and then you may proceed to reparation of the party.

Colonel Theophilus Jones. That may be the proper question after you have gone over the Report.

Mr. Godfrey. You have proceeded to vindicate the party. There is another thing which has been moved to you, wherein you ought to do something, both for the vindication of the honourable persons reflected upon, as also for the honour of this House.

It does not appear by the Report, whether this is an irregularity in point of judgment, or in point of corruption. You must either vindicate them in point of honour, or yourselves in point of justice. This is not determined, one way, or other, by the Committee, and you cannot, in honour, pass it by without putting it in a way of inquiry, whether it was in the commissioners an error of judgment, or of corruption, or affection.

Mr. Moody. I desire to second that motion. I hope we

* Here are several blank leaves in the MS.

come here to do equal justice to poor and rich, without respect of persons. If there be a fault, let us examine it.

Lord Lisle. There cannot a greater mischief come upon your Commissioners than to be had in ill opinion of any one member of this House. It is my desire it may be referred to a Committee, to consider and enquire whether they have done right or wrong; that if they have done well in it, they may be encouraged; if ill they may receive for their demerit, as the wisdom of the House shall think fit.

Mr. Robinson. I desire that your question may be to refer it to the Committee to enquire how this irregularity came to pass, whether through error of judgment in the Commissioners, or of corruption.

This question was offered upon the Speaker's offering a question, somewhat short, as was thought, for he was very modest in it, and unwilling, &c., and would have had the Committee to enquire in what parties the fault was, and with what mind it was done.

Mr. Westlake. I desire it may be enquired by the Committee whether this was done *ex malo animo*, or out of error of judgment.

Colonel Purefoy would needs have it that Mr. Westlake spoke false Latin, viz. *ex malum animo.*

Sir Gilbert Pickering. Refer this to a Committee, *in terminis,* to enquire with what mind this was done.

To enquire of men's intentions is such a thing, I confess, as I have not heard of.

Mr. Speaker said, this looked like an inquisition, strict, &c.

Colonel Sydenham. I understand not how you can examine the matter further than you have done, unless it be to examine men's intentions. You have proceeded to repair the party, and he is satisfied. Who then would prosecute a matter of this nature unless grieved by it.

The petitioner complains not of the Lords Commissioners, but of Cole and his rigorous proceedings. I desire you would do no more in it, unless some complaint or charge come regularly, by such as will follow the same. You have

borne your testimony, sufficiently, against the judgment. If you go further, you will but lay a heavy prejudice upon those that have faithfully served you, or otherwise heavily reflect upon yourselves, which must be the issue one way or other.

If you refer it to a Committee, I hope the Commissioners will take care to see the votes put in execution, and the party repaired. He desires not that any should be punished. I would have you proceed no further in it.

Major-General Boteler. It stands upon you, not only in respect of your own honour, but of the honour of the Lords Commissioners, for their vindication, that you should put this business into a way of enquiry.

Here the debate was diverted by putting a question.

Resolved, that the Lords Commissioners be required forthwith to see these resolves put in execution. *Ut supra.*

Mr. Bampfield. There is a great imputation cast upon your Commissioners, both by the remonstrance, and abroad. It is good, both for your own honour and theirs, that you should make further enquiry. The resolve of the Committee about the 200*l.* remains upon your records, though you do not affirm it. I would have that business heard at the bar.

Colonel Matthews. I desire you would hear the whole matter at the bar; both as to the 200*l.* and to the reflection upon your Commissioners.

Sir John Reynolds. I would not have you enter into such a debate at this time of day, but hear a short petition in my hands, wherein you are as highly bound to extend your relief.

Colonel Whetham. Vindicate Lord Whitlock, who is, both here and at the Committee, reflected upon, albeit both the remonstrance and the report clear him.

The Master of the Rolls. I would not have you further to enquire into the business. The party is relieved. He, I believe, desires no person's punishment.

Mr. Reynell moved, that the word "unduly granted," instead of "procured," might be in the question; but the Speaker said it could not be.

Colonel Gorges moved for leave for Mr. Windham to go into the country.

Major Aston. There is no charge regularly before you, against the Commissioners. I desire you would lay the debate aside, till somebody petition.

Sir Thomas Barnardiston stood up, once and again, and desired not to baffle business thus, as by another motion to lay aside this debate; but go into the question.

Mr. Bisse. I desire to second that motion, that you would further enquire into the business, that the nation may see you look into such things.

Colonel White. The question might be, to enquire if they have done their duty.

Major Audley. Unless some persons charge them, you ought not to proceed in this kind, to charge your judges in this blind manner. It is not regular, and too light a matter to charge them upon.

Colonel Briscoe. One of the judges is particularly charged in the remonstrance, and it imports your honour to enquire into it. I would have the word "granted," instead of "procured."

The Speaker was against that.

Colonel Jones. I desire the word "granted" may be added, as moved before. I hope the Lord will keep us all up, to do our judgment in righteousness, without respect of persons. I would have these honourable persons appear at the bar and vindicate themselves.

Mr. Speaker. Those gentlemen are misinformed that talk of coming to the bar. No member ought to answer until he be charged; and first, he must answer in his seat, and then at the bar, if need be.

Mr. Bond and *Mr. Rolle* informed the same, as see this debate at large, *supra*, in this business;* but it was so tossed till two, that they came to no question; save only for Mr. Windham to go into the country, and the Speaker, so in haste, forgot to adjourn the House.

The Grand Committee for Religion sat this afternoon, and with much ado got together.

Mr. Godfrey reported a clause from a private Committee

* Probably it should have occupied the blank leaves. See *supra*, p. 301, *note*.

touching parents, and masters, and mistresses, to educate their children and servants, and endeavour to bring them to understand the English tongue, and to read; and that Bibles should be brought into every family, at the parties' charge, or at the parish charge, if the poor people be not able to buy them.

The Committee read the clause in parts, and agreed to it.

Resolved, that Mr. Bampfield report the same to the House.

Judge-Advocate Whalley offered a book again* to the Committee, which he could not call less than diabolical. He read the title of it; it was called '*Ars Notoria*,' Englished by one Turner, who had the impudence not only to put to it his name, but to dedicate it to one Mr. William Ryves,† and say, "Printed by J. Cottrel; to be sold by Martha Harison, at the Lamb, at the East-end of Paul's, 1657."

He was directed by the Committee to read such places of the book as he misliked.

He read first the title, which was thus: "Ars Notoria, or the Notory Art of Solomon, showing the Cabalistical key of magical operations, &c., Judicial Astrology, Art of Memory, &c." He read other parts of the book, where a great efficacy was placed in repeating certain words at some hours, and several other odd tricks of conjuration, as that laying one's finger behind the right ear was good for the memory, and abundance of such stuff.

* See *supra*, p. 80.

† "To his ingenious and respected friend Mr. William Ryves, of St. Saviour's, Southwark, student in Physick and Astrology." The dedication is dated from "Little Brittain," which appears to have been, in the seventeenth century, a literary quarter of London. The work thus commences. "In the name of the holy and undivided Trinity, beginneth this most holy art of knowledge, revealed to Solomon, which the most high Creator, by his holy angel ministered to Solomon upon the altar of the Temple." The following couplet forms the conclusion:

"Learning shall live, and virtue still shall shine,
When folly dyes, and ignorance doth pine."

Mr. Bampfield said the title of the book* was sufficient to condemn it, so

Resolved, that this book be referred to a Committee to consider thereof, and report their opinions to this Committee, and that they send for the parties, and take care that the books be not dispersed abroad.†

Captain Baynes questioned whether, unless this Committee had power from the House, they could impower a private Committee to send for persons. It was also doubted by others; but it was thought, unless that power was given, there would be no benefit by appointing a Committee; you would lose the fruits of it.

* The following is the full title of this work, consisting of 168 pages, 18mo., a copy of which is in the library of the British Museum.

"Ars Notoria, or the Notory Art of Solomon, showing the Cabbalistical Key of Magical Operations, the Liberal Sciences, Divine Revelations, and the Art of Memory; whereunto is added, an Astrological Catechism, fully demonstrating the Art of Judicial Astrology; together with a rare natural Secret, necessary to be learned by all persons; especially Seamen, Merchants, and Travellers. An excellent invention, done by the magnetic vertue of the Load-stone.

"Written originally in Latine, and now Englished by Robert Turner. Φιλομαθης. London. Printed by J. Cottrel, and are to be sold by Martha Harison, at the Lamb, at the East end of Paul's, 1657."

In the same library are two original works by this translator, a "Description of the Little World of Man, 1654," and "ΒΟΤΑΝΟΛΟΓΙΑ, the British Physician, or the Nature and Virtue of English Plants. By Robert Turner, Botanolog. Stud. 1664." Mr. Granger says "this is an herbal, written in the manner of Culpeper," *Biog. Hist.* (1775) iv. 90.

† This was by no means the last interference of a Parliament with questions, apparently, beside the purpose of their appointment. In 1704 a Committee of twenty-five members, among whom was Mr. St. John, afterwards Lord Bolingbroke, was chosen to examine the "Second Thoughts concerning Human Soul," and "The Grand Essay; or, a Vindication of Reason and Religion, against Impostures of Philosophy." These works had been just published by a learned physician, Dr. Coward.

On a report from this Committee, the House, after denouncing "the said books," resolved, "that they should be burnt, next day, by the common hangman, in New Palace Yard, Westminster." "One effect of this procedure," adds Dr. Kippis, "was, that Dr. Coward's works were more generally read, and in the same year he gave to the world a new edition of his *Second Thoughts*." See *Biog. Brit.* iv. 358—362.

Major-General Goffe urged that the Committee for Bibles had sent for several persons, from time to time, and it was the usual practice of private Committees, in such cases, who had no other authority than from this Grand Committee.

Resolved, that the private Committee do send for all parties; *sed, quo jure*, &c.

In the Speaker's chamber sat the Committee for Mr. Acklam's Bill, Captain Lister in the chair.

In the Duchy Chamber sat the Committee of Trade upon the Bill for Norwich Stuffs. I promised Major-General Haines to be there, but I could not, for the Grand Committee.

In the debate about Turner's book, where he had prescribed certain words to be said at certain hours, as very efficacious, *Lord Strickland* stood up and said that Dr. Cosin* had put forth a book, wherein he had appointed prayers for such and such hours.† I know not to what end he spoke it, for it was suddenly offered. But presently they fell into a long debate how the papists laboured to delude us and intricate us, by obtruding doctrines of all sizes in their books dispersed abroad; Quakers, and magic, and all devils, &c.

Tuesday, January 6, 1656-7.

I was otherways engaged this day at home, so could not attend. The gown and chalice sent the night before by the woman.‡

* In 1660 he was appointed Bishop of Durham; but was now in exile at Paris, whither he had retired in 1643, to escape from the power of the Long Parliament. See *Biog. Brit.* iv. 283—285.

† It was published in 1627, and entitled "a Collection of Private Devotions; or, the Hours of Prayer." Mr. Morant, the author's biographer, admits that "some moderate persons were shocked with it, as drawing too near the superstitions of the Church of Rome." Against this book *Prynne* wrote his "Brief Survey and Censure of *Mr. Cozens's* Cozenizing devotions." *Ibid.* p. 282.

‡ To what this memorandum referred, does not appear

In the Clerk's book,* this day's journal was this.

Ordered, that Sir John Thorowgood be added to the Committee for Alehouses, Labourers, and Country Registers.

A Bill for the Excise and Customs, *ut supra*, read the second time and committed.

Ordered, that this Bill be debated in a Grand Committee of the House on Thursday next, and the Committee to sit on Tuesdays and Thursdays till the same be dispatched.

Ordered, that the Bill for continuing and assessing of a tax for the maintenance of the militia forces in England and Wales, be read to-morrow morning.

Ordered, that Sir William Roberts and Colonel Briscoe be added to Mr. Scot's Committee.

Ordered, that the Bill for the regulating the making of serges and perpetuanas† be read to-morrow, after the other three Bills already appointed to be then read.

Ordered, that the petition of Sir Richard Lucy be read on Saturday morning next.

In the Duchy Chamber sat the Committee of Trade, where was debated the great question, adjourned till this day, upon the petition of the Free Merchants against the Merchant Adventurers; wherein was set forth what a great prejudice it was to the Commonwealth that the trade of the woollen manufactures should be ingrossed into the hands of one company; it being the only staple trade of England, and ought to be improved to the best advantage.

There were strong arguments brought on the account of the free merchants, to prove that a free trade was most for the good of this nation.

Sir Christopher Pack, who is master of the Merchant Adventurers' company, turned in the debate like a horse, and answered every man. I believe he spoke at least thirty times.

Mr. Lloyd helped him as much as could be, but both reason and equity, and the sense of the Committee, being against them, they were forced at last to give up the cudgels, but with much ado. Sir Christopher Pack did cleave like a clegg,

* No doubt the MSS. *Journal*, from which the printed *Journals* were compiled, in the last century.

† Everlastings.

and was very angry he could not be heard *ad infinitum*, though the Committee were forced at last to come to a compact with him, that he should speak no more after that time. He said, at last, he hoped to be heard elsewhere. The man will speak well, and I heard that when the consultation was at Whitehall, about the admission of the Jews, * of all the head-pieces that were there, he was thought to give the strongest reasons against their coming in, of any man. Mr. Lloyd will speak well, but we were too hard for them.

There were only those two, and Alderman Geldard, and Major-General Bridge, and one or two more, of thirty-three, that were for the merchant-adventurers. All the rest were for free trade. Sir John Hobart, Captain Kiffen, Captain Hatsell, and Mr. Robinson, spoke freely to it. And at last the Committee came to this resolve: that it is for the good and benefit of the Commonwealth, that the native merchants may trade into Germany and the Netherlands, with all the woollen manufactures of this nation, without prejudice to the marts at Dort, and the other places in Holland. Cousin Highmore will be well pleased with it. It will recompense his loss by the vote, *ut supra*.

It seems his Highness had published a proclamation, not long since, on the behalf of the merchant-adventurers against

* In 1655, according to *Whitlock*, in consequence of "the proposals made by *Manasseh Ben Israel*;" who is said to have offered 200,000*l*. for the Jews' full admission to all the rights of citizenship. Among the merchants, at this conference, which lasted several days, was "Alderman Pack, late Lord Mayor." The ministers were both episcopalian and independent. Among the latter, "Mr. Nye and Mr. T. Goodwin were of opinion that it was a duty to yield to the Jews' request." But "the merchants vehemently insisted upon it, that such an admission of the Jews would enrich foreigners, and impoverish the natives of the land." The Protector complained that the question "was left more doubtful to him and the council than before." See "the Proceedings of the Jews in England, in 1655," annexed to "Two Journies to Jerusalem," (1730) pp. 169—176; *Parl. Hist.* xx. 473—477.

Some Jews, however, about this time, settled in England, secured from legal oppression, by the tolerant policy of the Protector. They were described twenty years later, as "making not above thirty or forty families." See *Angliæ Notitia* (1674) i. 39, 40.

the free traders, but they were surprized in it, and condemned unheard, as Captain Kiffen made it out to the Committee. They tell us it will so advance the woollen manufactures of this nation, that both the clothiers and the wool-buyers will be much enriched by it; and that the price of wool will rise two or three or four shillings in a stone. I wish it be not too specious.

Wednesday, January 7, 1656-7.

An Act for the better observation of the Lord's day, read the first time.

Per Colonel Rouse.

Resolved, that this Act be read the second time upon Wednesday next.

An Act for continuing and assessing of a tax for paying and maintaining of the militia forces, in England and Wales, for the security and preservation of the peace of the Commonwealth. Read the first time.

Per Mr. Speaker.

The order for bringing in the Bill was read first.

Mr. Bodurda. This was not the Bill intended to be brought in by the order. But *Mr. Speaker* directed it to be read first, and then any might speak against the Bill that pleased.

Lord Claypoole. This being the first time that this Bill is read, it must either be spoken to be read the second time, or rejected.

If I thought it were for your service, I should not speak against it. The Bill consists of two parts:

1. Decimations, and the continuance of them.

2. Indemnity to such persons as have acted in it.

For the first, I cannot see how it can stand, unless you violate your articles and the Act of Oblivion. For, by the Bill, you punish men wholly for an offence before committed. It lies altogether upon retrospection. It will be hard to convict men upon this Bill, and you will not surely lay this tax upon men till conviction. It ought to be considered, whether

you will entail this upon their posterity; whether the children shall be punished for the father's offence. I like the second part of it, that is, indemnity; but I hope that will be provided for in another Bill. I did but only start this debate, and leave it to others who are better able to speak to it. My opinion is, upon the whole matter, that this Bill ought to be rejected, and that is my humble motion.

Captain Baynes. I cannot be for the rejecting of this Bill, but that you would first give it a second reading, and, after a full debate upon it, you may then do as you think fit. You have not a day at present to appoint the second reading upon. To-morrow is your excise-bill day, and Friday the fast; and haply the Bill may hold you all next week. I desire it may be read the second time upon Friday sennight.

Lord Broghill. We ought in this to observe the royal law, "Do as ye would be done by." This is such a Bill as was never brought into a Parliament, therefore we ought to be more wary how we proceed. It ought to have a serious debate. I shall not plead any thing for that party upon whom you are going to lay the tax; but I do not see how this Bill can be for your honour or service to pass it; and that upon five considerations, which I shall humbly premise:

1. This party, upon whom we lay this tax, will be condemned unheard. They have none to represent them in Parliament, though I hope we all represent justice.

2. They are our enemies that we lay it upon.

3. It is a tax laid upon them to ease ourselves, and in this we ought to be very tender for our honour's sake.

4. There is no appeal for them. Your judgment is conclusive.

5. If I may mention, that we undertake the judgment upon us, of those things that are passed upon other men's enquiry and proceedings.

These five things being premised, I shall offer to you something as to the Bill itself, to be considered how it may stand with honour and honesty to pass it, as well as how it may stand with safety and utility. Justice and honesty ought to be the grounds of all law, and not only profit and safety.

Those are good considerations, and ought to be provided for, but still by just and lawful means. I would not have us give our enemies that advantage, as to do this injustice to them. They will have a fair plea. We shall, by this law, arm them more than they can arm themselves. Their estates only are punished in the Bill, as appears by the blank, which is another exception.

I never heard, in any time, that any persons were condemned, till convicted by a jury.

I believe that party are as bad as can be, but let us not be wicked also. It is Christ's rule, "Judge not according to appearances, but according to the thing itself." I had rather ten thousand guilty persons should escape unpunished, than one innocent person be punished. If they be guilty in their own hearts, let us not undertake to punish that. God's prerogative will do it, which will awe them more than all your militia, and arm us better than all our forces. Thus far, to consider it in point of justice, now in point of prudence.

How is it probable that we should gain that party by punishment, when we could not by grace. Surely this will harden them. I wish this do not make them a corporation, and make men of estates and no estates all alike desperate.

It was the care of the Long Parliament to lay aside all distinction of names.

It is said, there was necessity for it, but this is no safe rule, and ought not to be the rule for laws-making especially. Let us consider the case of Saul and the Gibeonites, for breaking the league with them.

For the second part of it. It is fit those persons that acted in it should be indemnified. They are honest men, and did it out of zeal, choosing rather to trust a Parliament to judge of the justness or necessities of their undertakings, for the public peace and safety, than their enemies; the insurrection happening just upon the rising of the late Parliament, and what was done was in the interval of Parliament, and in emergency, and mere necessity, for self-preservation.

I am, in my judgment, against the Bill; but there is good matter in it, as the indemnity. I should have that done be-

fore we rise. (*Major-General Lilburn*, underhand, said he scorned to accept that indemnity, he would venture his indemnity.) Upon the whole, I desire this Bill may be laid aside.

Mr. Robinson. I desire this Bill may have a second reading. I think we have observed the royal law which that noble Lord speaks of. We have been tender of that party. What tenders of friendship have we laid at their doors? How have they answered it? no compliance. It is told you, our justice with them will be our best militia. I think we do them but justice in this, and no more than they would do with us. They had such persons as represented them in Parliament, till they ran away to Oxford. That was not our fault. They were represented when they came up to Goldsmiths' Hall.

That rule of Christ is not a good rule for us. We must judge by appearances in cases of our own safety and preservation. We must not live securely and supinely upon miracles. I never trusted in a Cavalier. They are a false people. They distinguish themselves. I would have you to distinguish them. Let us preserve ourselves as long as we can. The law of nature obliges us to it. If they will unite and make themselves a corporation, let us unite and fortify ourselves against them. The Commissioners that acted in it, they are beholden to that lord that would indemnify such as have acted in the preservation of him and others from having their throats cut. It is well he will forgive such as have preserved him. Neither of the lords that spoke, have spoken against the Bill. One calls it a decimation. He does not know what part shall be paid, whether more or less. I remember not any such word in the Bill. It is a blank. They say, there is good matter in the Bill. I think it has a tendency to the public peace and quiet, and that it is equal, to lay the burthen whither the burthen comes from. I desire this Bill may have a second reading.

Mr. Drake. Notwithstanding what that gentleman said, I am of opinion with those that spoke before, that there is enough in the Bill to reject it. I plead for none of them, for

I believe, if they should prevail, I should be as deeply concerned as any man in point of suffering; but let their purposes be never so wicked against us, let us proceed justly against them. Let us not fortify them by their having a plea of injustice against us. It has been truly said, our justice will be our best militia.

1. This bill is against the common rule of justice, to punish all for the offence of one man. The compact was with the whole party, and if any of them have violated it since, let them be punished; but let not the innocent be punished with the nocent.

2. It is against the rule of common safety. It lays us a dangerous precedent. It may fall out upon any party, upon the presbyterians, or any other party. If one of them transgress a law in after-ages, all the party shall lie under the guilt. This is most dangerous.

3. This is against the peace of the nation. I looked upon the Act of Oblivion as the best expedient to procure our peace, and quiet the spirits of our enemies; and by this means we shall stir them up again and strengthen their hands against us, by compelling some to be our enemies that never intended to be so, but to live peaceably at home.

4. Consider the honour of the Parliament. Let us not alter the land-marks of our fathers. Our ancestors never thought fit, upon any emergency whatsoever, to violate their Acts of Oblivion. I would not have us to begin. My humble motion is, that this Bill may be laid aside.

Mr. Trevor. I cannot consent to the second reading of this Bill. It is against common justice, nay all justice, to punish all men for the offence of one, the innocent and nocent. The public faith of this nation is violated, if it be a punishment for what was done before the Act of Oblivion. If for what has been done since, they ought to have the trial of such persons as were restored to their liberties and properties: I am sure of it, those that were restored to their properties, at least. This makes a fair set to endanger the whole, for if they have forfeited the pardon, they have forfeited all. This is strange justice, a plain violation of it. God's justice, upon his parley

with Abraham, was otherwise. For ten righteous persons he would have spared a whole city.

I am not ashamed to plead for my enemies, where justice and the faith of the nation plead for them. What do we by this, but incorporate them against us, and put such a character of distinction upon them, that they will never be reconciled. We do but harden and strengthen them against us, and oblige them to a perpetual enmity. You provoke and unite your enemies, and divide yourselves, and necessitate new arms and charges, and raise new dangers. You provoke them, by taking away a tenth part from them, and leave them the nine parts to be revenged. I like not this middle way of policy, neither to oblige nor destroy. It leaves things doubtful, and puts men into a constant danger to be undone. To forgive our enemies is God's rule, and it is the only way to make them our friends.

Another argument to me, against this Bill, not spoken of, is the consequences of it; a new militia, raised with a tendency to divide this Commonwealth into provinces; a power too great to be bound within any law; in plain terms, to cantonize the nation, and prostitute our laws and civil peace, to a power that never was set up in any nation without dangerous consequences. From the time of Charles VII. in France, the date of their slaveries began. They expelled their enemies, but since that time, no old laws, no Parliaments, have been, which they had as free as any people before. I have discharged my conscience, in telling you how much I dread the consequence of it. I am against giving this Bill another reading.

Major-General Disbrowe. This little Bill has bred a great debate, and has had a great many severe words and terms given to it. I would that we go to the merits of the business. The interest of all honest men is concerned in it; all those that have faithfully served this interest. I was very much for the Act of Oblivion, and it was very hardly passed this House. I was weary of war, and thought this might have begot an union amongst us. I wish we might all have lived as Englishmen, but I see no hopes of it. All the favour in com-

pleting the Act of Oblivion, and all other favours done, what good has it wrought upon them?

I believe no man has come under a decimation, but such as have either acted or spoken bitterly against the Government, and for their young king, and drank his health. Many have escaped that have done such things. I hope they shall come under decimation. This is but the issues of their hearts. Out of the abundance of the heart the mouth speaks. How can you better distinguish them? Tell me one man that discovered any part of the plot; but when we came to seek any houses for them, they were ready to excuse them and conceal them, upon the rising at Salisbury. It is plain they have gone contrary to the Act of Oblivion. That was to the end, that all men's spirits might be quieted. If God had not wonderfully done it, in preventing them, they would themselves have made good the Act of Oblivion. I think it is too light a tax, a decimation; I would have it higher.

It is quarrelled against, that the militia forces are raised. I wish that there were no need of it; but, in regard there is a necessity for it, it is just they that occasion it, should bear the charge.

It is questioned, because my Lord Protector raised them, or that the honestest men in the country are put into the service.

It was blows, not fair words, that settled, and must settle, the peace of England. Haply, you may find them speaking good words. Let us consider what they would do by us, if they had the power.

But the great exception is, the cantonizing of the nation by settling forces in every county. How was the former, old militia, in the late king's time, settled; 10,000 armed men in one place, under the lieutenants, and some in other places. Is there more danger now than before?

There have not been two or three months together, but new plots were still abroad, and within these two or three months: which of them has come and told you, such a plot was laid, and such a plot? For the indemnity, we are much beholden to those gentlemen that would give it us.

It is our swords must indemnify us. It is that must procure our safety. I think we can make it out, all England over, that not one man was decimated, but who had acted or spoken against the present Government.

There is not such a word as decimated in the Bill. I would have it a *medium*, and take it off, as you see occasion. What need had we of an armed man in all the nation, but for them, except in port towns? If we speak against this Bill, we quarrel with our own safety, and I believe none will be against it, that are for the true old interest of the nation. I value the satisfying one hundred of such as have gone with us in the honest way, more than ten thousand of your enemies. Our friends are obliged by seeing us make this difference. I desire this Bill may have a second reading. I hope, for all these exceptions to it, that it may be made a good Bill.

Lord Whitlock. I desire, for your healths' sake, and because it is late, that you would adjourn; but if not, I desire to say something to this Bill. He sat down and rose again.

It pleased that honourable person to say that none that were for the honest interest of the nation, would speak against this Bill. I hope, with submission, we may differ in opinion, and not lie under such a suspicion. We have served from the beginning.* I take not the question to be, whether we should take care to preserve ourselves against the common enemy or no? I believe they may be still plotting. They are an industrious people. I hope we shall be as industrious in providing for our safety. The question is, whether this Bill shall be retained; and we ought to consider how it stands with our faith.

We find several Acts of Oblivion, one in King John's time, under his seal, called *Charta de Securitate*. The persons par-

* The following acknowledgment of this Speaker's public services had just occurred.

"Whitehall, January 6.—His Highness conferred the honour of knighthood upon Colonel James Whitelock, eldest son of the right honourable Lord Whitlock; both father and son having merited much of the Commonwealth, by many eminent services." *Pub. Intel.* No. 65.

doned broke out again, but none punished but such as broke out actually.

The like was an Act of Oblivion in Henry III., where the persons disinherited, fled to the Isle of Ely, and divers went to them; yet the Act of Oblivion was duly observed. Only they were punished that fled from it. The whole party was not punished.

So in Edward I., where Lieutenants were settled in the nature of Major-Generals, but I hear nothing of them further: what became of the constitution?

I shall not mention to you those things that were done of the like nature in Edward II. and Richard II., where the Lieutenants began to be high, and to assume supreme jurisdiction, &c.

I never find that any Act of Oblivion was broken. If this Act of Oblivion was duly obtained, (as I remember it was) it ought to be observed duly, as other former Acts of Oblivion have been kept, in all ages inviolably. If you shake that Act, you shake all foundations. All public sales, and all Acts that the Long Parliament made, are shaken, and laid flat, and what the consequences of that may be, I dread to consider. I hope the wisdom of Parliament will find some other expedient for preservation of the public peace, than by this means. I cannot call it an extraordinary tax. I hope the Bill calls it not so. If it do, the Bill is mistaken. It was only monies raised upon your enemies, upon an urgent necessity, for preservation of the peace. I think what the Major-Generals and the Commissioners did, they did not at all violate the Act of Oblivion; but, if this Bill be admitted here, where it comes for your sanction to confirm these Acts, the Act of Oblivion is repealed, as to that part. I shall not say any thing against what they have done, but to call it a tax. It is against the Instrument of Government, and the fundamental laws, to lay any tax, but in Parliament, by free consent. That argument of punishing the innocent with the nocent, weighs very much with me. Instance in the Articles of Oxford, where one Article is, "That no man shall be punished for the offence of another."

1. He excepts against the words *aided and abetted*, which, if naturally extended, may reach all whose lands have paid assessments to the late king's party.

2. That it confirms the tax under the name of a tax, which ought not to be named so.

What those honourable persons did in order to your safety, it is fit they should be indemnified. They must be so, for they have done you faithful service in it. But, to pass this Bill, to shake the Act of Parliament, I cannot think it for your service. You ought to consider whether you will continue the militia as it is settled. Haply, to have sixty in a county, you may discontent others that have faithfully served you, that they are not all taken in. How soon did we send out 12,000 men against our enemies at Worcester; and yet had no militia in every county; and why may there not be such an expedient now found out to take off this charge, or otherwise to provide maintenance for this militia, in another way than by breaking our faith? I cannot conceive this Bill is for your honour or service. I desire that it may be laid aside.

Lord Lambert. This gentleman that spoke last, did a little mistake him that spoke before, in that he said none that were faithful to the true interest of the nation, would speak against this Bill. He was mistaken. It was but only his judgment and opinion.

I wish any man could propound an expedient to be secure against your common enemies, by another way than as the militia is settled. The quarrel is now between light and darkness; not who shall rule, but whether we shall live, or be preserved, or no. Good words will not do with the Cavaliers. I wish we be not too careless. I shall not speak much to this business now. It is of great weight. I only stood up first, to speak to the orders of the House. But now I am up, I desire it may be referred to a Grand Committee to be debated to-morrow, where I doubt not but satisfaction to the full may be given in this matter to one another. We are not at the bottom of it yet. I desire it may have a free debate, every man to speak his conscience.

Lord Fleetwood. I rise up to move you to adjourn this debate till to-morrow, and nothing to intervene. I conceive it not so proper to refer a Bill to a Grand Committee upon first reading.

Mr. Ashe the elder. I rise up to second the motion of the honourable person that spoke last, that you would adjourn the debate till to-morrow. It is expressly against the orders of the House, to move to refer it to a Grand Committee.

The Master of the Rolls. Though a Bill cannot be referred to a Grand Committee upon the first reading, yet I am of the noble Lord's opinion that moved it, that the debate may be referred to a Grand Committee. I desire it may be so, and that to-morrow may be appointed for the day.

Lord Strickland. This is the first time that ever I heard of a debate to be referred to a Grand Committee. I desire the debate may be adjourned till to-morrow.

Mr. Robinson. Under favour, I think it is not against the orders of the House, to move to have a debate referred to a Grand Committee. In the Long Parliament, my Lord St. John brought in some propositions, and offered them to the House, who thereupon referred them to a Grand Committee: and I have also known it in other cases.

Resolved, that this debate be adjourned till to-morrow morning, and nothing to intervene.

Captain Baynes stood up to move something. I think it was to have a day for reading the Bill for Yorkshire cloths, but the Speaker left the chair immediately at past twelve.

There was a pretty full House, and a very mettled and serious debate for the time, and will be, before all be done; for one might perceive, by many men's countenances, that they stood full charged for speaking to the business.

Sir John Reynolds had numbered the House, and said at rising, there were 220 at the least, besides tobacconists.

Few Committees sat this afternoon; but I was in the office taking some Journals out.

In the Speaker's chamber sat the Committee for highways. Colonel Coker had the chair. In the inner painted chamber, the Committee for Gloucester Hospital was expected. The

Committee of weavers sat below. Colonel Fitz James, and divers others, were talking about the decimations, and said, it was the distinguishing character of those that were against this Bill, that they were for hereditary rank. He was saying, how he had made Colonel Rouse believe that William Hampden, Mr. Throgmorton, and himself, being at dinner at Whitehall, were sent in for to his Highness and knighted; and that at the same time, Major-General Howard was to be made Baron of Naworth, and Sir John Reynolds, Baron of —— There is something in it, for they say Major-General Howard's patent is ingrossed.

There was a murder committed in this street last night, by one Douglas, a madman, at the George Inn. He struck the gentleman, one Mr. Bond, a solicitor, on the breast, &c. He went home, and said he was so beaten he could not live. He died presently after, and, being rich, was this day buried in

Thursday, January 8, 1656-7.

Sir Thomas Wroth. I move that, in respect of the Speaker's weakness,* (who had stayed till almost ten) † you would adjourn the business of the day, and go into a Grand Committee. If this motion is not liked, I shall desire to say something to the business.

Mr. Attorney-General. You have a great business to be debated this day, (the Bill for excise in a Grand Committee) I desire that you would adjourn the debate for another day, in regard of your ease.

Mr. Bond and *Mr. Ashe the Elder.* For your own ease, let the House go into a Grand Committee upon the Excise Bill, and adjourn till Monday, and then take up this debate.

Mr. Robinson. I should as much respect your ease and health as any man, but I look upon this business of the day as of as great concernment as any thing; and I can have no heart to go to any business else, till we know how we shall be

* See *supra*, p. 297.

† See *supra*, p. 36, *note*.

secured as to our sitting here. For, if we contend so about easing our enemies, I fear me we shall forfeit and discontent our friends. If you will not go on with this, I would not have us admit any other business, but adjourn for some time.

Lord Lambert. This is a business of such consequence, that I see not how we can proceed upon any thing till it be over. I wish, if it had been possible, we might have gone on with it. It is a great discouragement to your friends to see us scruple at this business so much, and encourages our enemies. I would have us do nothing till this be ended.

Colonel Whetham. If you adjourn, I desire it may be determined whether Committees may sit or no, for it was debated last adjournment.

Alderman Foot. Here are divers aldermen and citizens of London waiting at the door with a petition. I desire they may be called in.

Major-General Whalley. A great many of us are very heartless to go on with any other business, till it be known what testimony we shall show to the old interest of England. If you will admit of any business, I desire you would go on with that which is the business of the day; but I doubt it will not be with your ease to go upon the debate now.

Major-General Goffe. I am much troubled that a post-night should pass, before you come to a resolution in this business. I wish it had been otherwise. I doubt the consequences of it, when it comes to be noised in the country. It is a matter of such weight, that I confess I should have thought myself happy if we could have gone on with this debate, but we must be merciful to you and not debate you to death. However, let us not admit new business till we have done this.

Sir Thomas Wroth. Determine this, whether Committees may sit, the House being adjourned.

Mr. Speaker. This is very apparent, every week, that Committees are still saved, by adjournment from Saturday to Monday.

Lord Chief-Justice. It is very clear; and looking into Journals you will find, that, without special order to save Committees, Committees cannot sit. When the House adjourned

into London,* there was a special order that Committees should sit, notwithstanding the adjournment of the House. If the House should rise, you may come back again and sit, if you please, but that must be by order.

Resolved, that all Committees may sit and act, notwithstanding the adjournment of the House.

Lord Eure moved that Colonel Lascels have leave to go into the country.

Sir William Strickland seconded him.

Mr. Nathaniel Bacon. Before you adjourn, take care that the fast-day † be kept in the House, on Friday.

Mr. Speaker. That is very material, and I thought to have moved you in it. There must be a saving of that day, and I doubt whether I ought not to be here to make a House.

Resolved, that the fast-day be kept in the House on Friday next, notwithstanding the Speaker's absence.

Mr. Fowell moved, that the House might be dissolved into a Grand Committee upon the Bill for the Excise, upon Saturday next.

Mr. Downing and *Colonel White.* If we cannot go on with one business, let us not exclude all business; to do nothing, because we cannot do that which is the business of the day. I desire we may go on in a Grand Committee upon the Bill for Excise.

Mr. Bond. Notwithstanding the adjournment, the House may keep together in a Grand Committee, upon the Excise Bill.

Major-General Disbrowe. I never knew any success of a Grand Committee sitting one day, and reporting it another time; never knew any fruits of it, for then any member may speak when it is reported, as well as at the debate. I desire the question may be, to adjourn.

Sir William Strickland. We might go on in a Grand Committee upon the Excise Bill, and no doubt but success enough may come of it. We do but spend our time, to stay

* To Grocers' Hall, January 4th, 1641-2.

† See *supra*, p. 291.

here, and do nothing. I desire that the Committee may sit as well on Saturday as this day.

Mr. Robinson. It is not solemnity enough for so great a Bill, to be in a Grand Committee upon it, the Speaker not present. It looks like a private Committee, and little fruits will come of it.

Major-General Disbrowe. It may be considered whether ever a Grand Committee sat when the House was adjourned so long.

Sir Richard Onslow. I know, in the Long Parliament,* when the House was adjourned into the city for ten days, that the Grand Committee sat, from day to day, upon the business of the five members.

Resolved, that the Grand Committee do sit and act this day, and on Saturday morning, upon the Bill for Excise, notwithstanding the adjournment of the House.

Resolved, that this House do adjourn itself till Monday morning.

After this last question was put, a member stood up and said, that the *Noes* in the former question had it, but, by Mr. Speaker, he spoke too late.

Mr. Bond was of opinion that there needed no question for the Grand Committee's sitting, for they might sit by force of the former vote and orders.

Resolved, that Colonel Lascels have leave to go into the country.

Mr. Speaker left the chair, and Mr. Fowell was called to the Grand Committee chair by Mr. Ashe the elder, who, to excuse his neighbour, Baron Parker, (who was also called on to the chair,) stood up and called Mr. Fowell.

The order for the Grand Committee read.

Resolved, that the Isles of Jersy, and Guernsy, and Wight, be left out of the Bill.

Mr. Bond and *Mr. Downing.* These isles are poor, and were never charged in any time, not so much as with customs. All kings and queens were careful of the poor people.

* In which he sat for the County of Surrey.

Per Mr. Bond, Mr. Downing and *Mr. Robinson.*

Resolved, that Scotland and Ireland, and the Isles thereunto belonging, be also charged in this Bill as well as England.

Colonel Whetham. Upon the same account that you excused the other islands, you should leave out the isles of Scotland, for they are as poor as can be.

Resolved, that every pound of Spanish tobacco pay 12*d.* And every pound of English plantations 1*d.* Resolved to agree to this clause.

Resolved, that for every ton of wine, not of the growth of Spain, there be paid 6*l.*

Mr. Ashe the elder. The dominions thereof should be added, otherwise the Canary were excluded.

Resolved, that the words "or the dominions thereof," be added.

Resolved, that every ton of Spanish wine pay 9*l.*

Mr. Downing. Spanish wine pays not proportionable to French and Rhenish wine, though Spain be our enemy.

Alderman Foot. The Spanish wine and Malaga's are very bad this year, and it is too high.

Resolved, that the vintners pay for every ton of wine in their cellars 3*l.*

Alderman Foot. They have paid for it once, would you have them pay for it again.

Captain Baynes. This gentleman spoke before for the merchants: now he speaks against them; for the Committee considered if 3*l.* per ton be not paid by the vintners for the wine in their cellars, their charge will be unequal to the merchants'. They paid but 6*l.* and the merchants shall pay 9*l.* a ton. This is unequal, and will cause the vintners to undersell the merchants.

Colonel Cooper. The retailers ought not to pay over again. It is very hard. They have once paid all their duty that could be demanded of them. This is but 6*l.* per ton upon the merchants, which is but 6*d.* per gallon.

Captain Baynes. The vintners have been a long time gainers. They sell for 96*l.* per ton, and buy it for 50*l.* per

ton. The merchants ought to be rather spared; for the retailers pay but 3*l.* out of all their gain.

Mr. Downing. We lay not near so much charge upon our wines as the Hollanders do. I desire this may lie upon the retailers.

Alderman Foot. It is much equity that they should not pay their duty over again. The vintners pay great house-rents and taxes. The new wines are very bad, and the old wines will grow eager.

Sir Christopher Pack. I desire this may go on upon the vintners; for none have such opportunities to be gainers as they. Your excise will lie most justly upon wines, tobacco, and strong waters.

Colonel White. If you lay not this upon the vintners, you had as good take it off the merchant too; for I believe the retailers have filled their cellars already, and it will do you no service this year.

Mr. Highland. This is not just. I hope it will never pass this House. I am afraid it will not advance your excise. Raising of your charge will carry your merchants to another place. This is against the liberty of the people of England to double charge one with duty. I wonder who would break into their cellars, if you did not provide a clause for it. I hope it will not pass the House.

Lord Strickland. You punish the Spaniard by this means, and not the merchants, or vintners; and if customs or excise must be laid, it is most justly upon the wines. We vend more than all Europe besides. If you lay it not now upon the vintners, they will say still, it is old wine in their cellars.

Mr. Godfrey. In punishing the Spaniard, I would not have you punish your own people. It is against all equity to lay a further excise upon what has already paid the full duty that can be demanded. By the same rule you may increase the excise upon any other commodity which the retailer hath paid the duty for.

Sir William Strickland. If you had this House full of gold, you ought in justice to punish the vintners; for they

have oppressed the nation, and enriched themselves, and got more wealth than any profession whatsoever.

Captain Hatsel. The merchants have been oppressed, the vintners have got the riches. They have bought their wines at 50*l.* per ton, and have sold at 100*l.* per ton. Their gain was certain, for the price never fell, after it was once raised; for from 12*d.* to 2*s.* it came sometimes to 2*s.* 6*d.* This was treble excise that we paid.

Mr. Highland. Let us not judge of the gains of merchants and vintners. The merchants have gained excessively. I have seen their bills where they have taken 40*l.* a pipe. They venture, and sell their commodities at excessive rates. Time was when excise was thought an odious thing in this nation. Let us not give occasion to the people to call it odious still.

Mr. Ashe the Elder. I wonder how that gentleman has a face to say that the merchants have the gain. It is known the Spaniard has raised the customs upon the merchants; the vintners have been constant gainers; and, under colour of excise, have made us pay treble excise, from 12*d.* per quart to 2*s.* 6*d.* and 2*s.*

Mr. Attorney-General. If you lay not this upon the vintners, it is not the merchants that will lose by it, but it is the commonwealth will be cheated; for most of the wine of this vintage is now in the vintners' cellars. The vintners have gained excessively, and raised the price of their wines double.

Mr. Downing. Unless you lay it upon the vintners you will have no benefit at all of this clause, for we know that the time of year for such wine to come in is only now, and most of it is already in the merchants' cellars. Again, this clause has once passed the House upon a long debate.

Here grew a dispute, whether one could speak against a vote of the House.

Mr. Attorney-General asserted it, that one could not speak against a vote of the House.

Sir Lislebone Long and *Mr. Bond* were of another opinion, that when the votes come to be brought into the House in a Bill, one may speak to every piece of it, nothing was so clear.

This argument was tossed between Mr. Attorney-General and Sir Lislebone Long a good while, and no resolution come to; but liberty was taken to speak against the vote, *ut supra.*

Resolved, that there be 3*l.* per ton laid upon vintners, *ut supra.*

Resolved, that these words be added to the clause, after the word vintners, "wine coopers, or any other persons, buying to sell again." Resolved, to agree to the clause, thus amended.

Resolved, that the commissioners have power to appoint officers to enter into houses, warehouses, cellars, &c.

Colonel White moved, that there may be added, "between sun and sun, and that by warrant under hand and seal."

Mr. Robinson, moved that there might be commissioners appointed in every county, in this Bill, to the end things may be better regulated in the country than now they are. That the sub-commissioners may not be parties, farmers of the excise, to be judges in their own cases, to imprison men's persons, and distrain men's goods.

Captain Baynes. You may appoint new officers, notwithstanding this clause.

Mr. Noel. If you have any exception against your officers now in commission, you may put others in; but if not, it will not admit of a delay to do it by new hands. The commodities exciseable, are daily consuming. You are necessitated to make use of your officers now in commission.

Mr. Robinson. This necessity has been an argument these twelve years, for continuing men in office. I would have it made use of no more. It is fit we should know who are the officers, that we may expect an account from them, and that they may know their masters. If a Parliament lay a tax, let them appoint officers to lay it, and regulate the collection, &c.

Mr. Noel was going to add the words "Commissioners hereafter named."

Sir Lislebone Long stood up and said, it is not so seasonable at this time to appoint officers. I never knew any success of Parliaments appointing officers. He that has four offices must have five. I desire you would go on with the Bill, and put this to the House.

Mr. Downing was of the same opinion.

Mr. Attorney-General. Go on, and put this to the House.

Judge Lawrence. It is not so fit to appoint officers by Act of Parliament; for they cannot be removed for any misdemeanours but in Parliament.

Mr. Robinson. I doubt the gentleman of the long robe is mistaken, that none can be removed but by Parliament for any misdemeanour. He may remember judges' commissions run *quamdiu se bene gesserit.* Let us not lose our privilege of Parliament, for we find that officers for tonnage and poundage were appointed in Parliament.

Mr. Bampfield. I desire you would put the question for naming Commissioners in the Bill. It is fit we should know those to whom we give power to enter into men's houses, and break doors, &c. By the same power that they may enter, they may rob or steal.

The question being put, whether the words "by the Commissioners hereafter named," should be added in this place, it was carried in the negative.

The Committee divided: *Yeas* 40, *Noes* 50. Tellers, Lord Salisbury and Mr. Attorney-General.

Resolved, that the word "spent" be left out.

Mr. Godfrey and *Mr. West* moved, that the entry of the officer might be in the presence of a known sworn officer, and between sun and sun.

Captain Baynes. This clause will do better afterwards, when you come to the compulsive clause, as to the breaking open doors. If the officers be not opposed, there is no need of a sworn officer; for, by consent of the vintner, night or day, the officer may enter.

Mr. Highland. I hope you will never put the trouble upon the constable, to run at every motion of a petty officer. They shall have trouble endless. I think where there is no opposition, there is no occasion for a constable.

Colonel Cooper. If a constable must be tied to attend an exciseman, between sun and sun, where there is no occasion, they must do nothing else. It is fit you should give the constable a good salary.

Mr. Downing. This looks like arresting of a man; to take a constable along, to every act that the exciseman does. This is very impracticable, and it will lose your excise. You had better make your constable exciseman, and so save a labour.

Mr. Robinson. It is usual in London for a landlord to take a constable along with him, when he goes to demand his rent. I would have this bear as much of the civil authority as may be, and that it may be between sun-set and sun-rising.

Alderman Foot. I doubt, by limiting a time for the officers to enter, you will destroy your excise, for there will be a great advantage taken, if the retailers have any time to convey away their commodities. I fear this will not be made practicable.

Judge Lawrence moved, that it might not be put between sun and sun, but between such and such hours, because of the shortness of the winter days.

Mr. Bampfield. I desire it may stand between sun and sun, for there will be time enough for the officer to search in winter days as well as summer. The sun shines in winter as well as summer, in England. It may be, it does not shine in some part of Scotland.

Mr. Godfrey. Under colour of an officer, any thief may enter a man's house in the night time.

Colonel Rouse. Many of us have a greater stomach to our dinners than to the Excise Bill. I desire you would adjourn till Saturday.

Mr. Bampfield. I desire you would adjourn, that we may sleep in quiet in our beds this night, now that you are debating the breaking open of mens' doors, &c. There are many things in this clause which will be spoken to, and you have little time for it now.

Alderman Foot. I rise up to second that motion, to adjourn.

Mr. Downing. Refer this clause to a private Committee, to prepare it against your sitting.

Resolved, that a sub-Committee be appointed, to prepare this clause against the next sitting. Captain Baynes, Mr.

Downing, Mr. Robinson, Mr. Godfrey, Mr. Bampfield, and others.

In the inner painted chamber sat the Committee for Leicester Hospital.*

In the Speaker's chamber some of the Committee for Bibles, and for Judge-Advocate Whalley's diabolical book† met, but could not make a Committee.

In the duchy chamber sat the Committee upon a prisage. I was writing all the time in the office.

Captain Lister went this day out of town to Edmonton, to bury Lieutenant-Colonel Cobbett, who was Lieutenant-Colonel to Major-General Lambert, a very honest sociable man, they said; who got his death at Dunbar‡ by marching in a great sweat to fight the enemy off a hill, and was there commanded on duty to stay all night, where it rained terribly, and there he got such a cold as he never recovered.

That night I was with Mr. Moore and Mr. Paine at the Bull's Head, and with Mr. Booth and Colonel Browne at the Half-moon. They observed that Captain Philip Jones, who has now 7,000*l.* per annum, was born but to 8 or 10*l.* a year, Sir John Barkstead was a thimble-maker, Kelsey sold leather-points, Major-General Bridge was a common dragooner in Yorkshire, not long since a sneaking, &c.; and they reckoned up the mean extraction of many more Major-Generals.

Ordered, that Sir John Trevor and Mr. Trevor, have leave to go into the country.

Ordered, that Colonel Bethel have leave to go into the country.

Resolved, that, notwithstanding the adjournment of the House, the several Committees may sit and act.

Resolved, that the members of this House do meet tomorrow, for the observation of the fast, notwithstanding the absence of Mr. Speaker.

Resolved, that the debate upon the Bill for continuing and laying the tax for maintainance of the militia forces, &c. be adjourned till Monday morning, and nothing to intervene.

* See *supra*, p. 82. † See *supra*, p. 305. ‡ In 1650.

The question being propounded, that the House do sit in a Grand Committee of the whole House on this day, and on Saturday morning next, upon the Bill of Excise, notwithstanding the adjournment of the House, and that the House be resolved into a Grand Committee accordingly:

And the question being put, that that question should now be put, it passed in the affirmative. And the main question being put, it was resolved, that the House, in a Grand Committee of the whole House, &c. *ut supra.*

The House, according to former order, adjourned itself until Monday morning next, at eight o'clock.

The House, according to former order, was resolved into a Grand Committee upon the additional Bill, for the better improvement and advancing the receipt of the Excise. See Committees *supra.*

Mr. Speaker left the chair, Mr. Fowell took the chair. See debates *inde supra.*

Mr. Disbrowe told Mr. West and me, that, this night, about eleven or twelve, the plot for the firing of Whitehall chapel was discovered by the smell of a match, by an officer of the guard. He heard two of the plotters examined by his Highness. He said it was thus.

They had cut a hole in a back-door, entering into the chapel, the next seat to Lord Lambert's, and there pulled back the spring lock, and in the seat set a basket of wild-fire, made up of all combustibles, as tar, pitch, tow, gunpowder, &c. in little pieces, and hung a lighted match, about half-a-yard long, out of the basket, which, by their computation, would have burnt up to the basket within half-an-hour. With this they would have set the chapel on fire, and haply a great part of the House, for, as one of the plotters confessed, it was such wild stuff it would have burned through stone walls.

In this flame, some great villany was to be acted upon his Highness's person, that the offenders might better escape in the smoke, as will appear by the sequel, when it comes to be further discovered.

The council were sent for after they were risen; and it was once purposed to have set some seats on fire and doubled the

guard, and so watched the consequence: but this was thought to raise too great a tumult, and call down the city, and make the people believe it was only a purposed plot to try men's spirits.

Next morning two of the offenders were discovered. One confessed something. The other was a stout, sturdy fellow. He had been a soldier all along in the Parliament army, and quarter-master to Sir John Reynolds. He was loth to be taken, so had his nose cut off almost, by three of the guard, who went to apprehend him. He told them he wanted his weapon, else he would not have been taken upon such slender terms.

His Highness asked him if he were not in the chapel that night about five and six. He answered no. But his Highness said he would prove it by two or three witnesses, who saw him there at that time. He told him further, he could prove that he was the man should have pistoled him in his coach, one time; and another time, he and some others were upon the same attempt in Hyde-park; they hoping to escape by their horse-heels, having filed the hinges of a gate so small that it would yield at first offer: and that he knew all their plots, and how long they have been about it, and how that he was to have 1500*l.* paid him as soon as he had done the feat, by the appointment of one Sexby, who is now with Charles Stuart.* This Sexby was a colonel in the Parliament's army, and one of Overton's party, who should have surprised General Monk in Scotland; all persons very much discontented. Sexby was once an adjutator.

It is said further, that there were 1600*l.* to be given by the King of Spain to one of them, for betraying an English garrison.

There is more at the bottom of this plot than we know of. It seems there are six more of the plotters discovered, and it is found, that this Quartermaster (Cinderton,† I think his name is) had one hundred good horses in town, not above two at a stable, for what purpose time will experience. This

* See *Clarendon*, iii. 639. † Sindercomb.

will make work for the High Court of Justice. It was high time to erect one. They are all Levellers,* and discontented persons, as I hear.

Friday, January 9, 1656-7.

This day the Parliament, according to former order, kept a day of fasting and humiliation within their own walls, where the work of the day was carried on by Dr. Reynolds, Mr. Caryl, and Mr. Barker.

Mr. Caryl only prayed, the other two preached, and very good sermons they said. (I was not well, so could not attend the service.) It held till past four. I believe we shall have them both in print shortly, by order of the House. I am sorry I missed them.

Saturday, January 10, 1656-7.

The Grand Committee of the House sat upon the said additional Bill, concerning the Excise and new Impost, but I was writing most part of the time in the office.

In the painted chamber sat the Committee upon Mr. Scot's petition.† Mr. Bampfield had the chair, but was very sick of it, and some reflections between him, and Mr. Bodurda, and Colonel Carter upon it.

The lady did appear, and disappeared again; only presented a petition for longer time, in regard Mr. Finch, her counsel, was out of town. She wanted alimony to defend the charge. Mr. Scot would allow her none, and she hoped the Parliament would assign it, if she had but time to apply herself.

Her petition, though collateral to the matter, held a long debate, and could come to no question, which caused the reflection aforesaid.

* See *supra*, p. 49, *Note* ‡.

† See *supra*, p. 297.

Colonel Carter, *Mr. Bodurda*, *Lord Strickland*, *Colonel Grosvenor*, *Mr. Lister*, *Colonel Fitz-James*, and *Mr. Waller*, were much for the lady, but the greater part against her.

Mr. Scot's counsel observing this long debate, wished him to offer 20*s*. a day to procure counsel for her. Her simple husband could not utter his mind in a word of sense, but the counsel propounded this.

It was thought by some an unseasonable offer, to have a fee to retain counsel, and no time for it. Time was desired by Mr. Waller and others, and came to a question; but at last the Committee went on to proof of the petition, notwithstanding there was one Mr. Lea, who came with her to deliver the petition, who was a counsellor, and took notes for her, but denied that he was retained.

The first witness produced for the petitioner was Mr. Timothy Rookes, who, it seems, is, and has been, an ancient servant at Scot's Hall. He ripped up the whole course of her elopement from her husband.

He said they were married about twenty-five or twenty-six years ago. Her father, Lord Goring, was to have given 3000*l*. portion with her, but only 1500*l*. are paid. She lived with her husband about two years, till, desiring one time to go to London, to stay but a month or three weeks, to see some friends, she stayed there three years, till she was brought home by some of her friends. Another time, she pretended to go to see her brother, who had a sore foot, promising to stay but three weeks, yet stayed three years. Another time, she asked leave to go to London for a month, promising, upon her honour, to return within six weeks, but stayed out the former time.

Still the poor man was content, from time to time, to receive her and all her faults, and sent to one Mr. Best, in London, to pay her 40*l*. to accommodate her for her journey home; but she having received the griggs set sail another way, for Oxford, where she was all the time of the siege, playing all her casts.

She came again to London, and there agreed with five or six lusty fellows, whom she had to a tavern, and gave them 15*l*.

in hand, promising them 100*l.* when they had done their work.

These five or six blades, by the conduct of one of her servants, who, for fear of suspicion, stayed half a mile short at a park side, came to Sir Edward Scot's house, father of the petitioner. They pretended to be of Colonel Rich's regiment, and desired the civility of the house, to afford them a cup of beer. They had both beer and some wine. These blades, watching their opportunity, single out the petitioner, and take him, walking in the court, with a hawk on his fist, and throw the hawk from him, and clap him up behind one of them, without boots, &c. and hurry him away to London; where he was kept in obscurity, till, by General Cromwell's order, he was set at liberty, and the blades, some of them, caught.

This witness did not declare the end of bringing him up to London; but it is conceived it was to lock her and him together, that the bold-face might have the more colour for fathering upon him those children, which, in all probability, were gotten in adultery, they having lived so long asunder.

It seems there is one boy very like the Gorings, and it is her drift that boy might inherit Scot's estate, which is a brave estate in Kent, as I take it; and one part of the petition prays that her children may not inherit his estate, and that he may be divorced from her.

The second witness was one Major Riswick, a German, who had been a major in the Parliament's army, but very poor, and upon crutches. He evidenced two remarkable passages of her life, but one could scarce understand him, for he spoke pitiful English, insomuch that Mr. Waller desired he might be set aside till the last witness, that he might bring his interpreter, for he professed he could not understand a word, but the Committee thought the motion too light for their gravity. The witness went on.*

It was a great Committee; there were above one hundred people present, besides pickpockets, which, by report, were also there. They said one was under the table, and Colonel

* His evidence is here omitted, as not proper for publication, however such a recital may have been requisite for the purposes of justice.

Fiennes drew his sword and vapoured hugely, how he would spit him; but the fellow escaped, if there were any such.

This served the Committee for one night, and indeed it was past eight, so we adjourned till Saturday, to hear out the rest of the evidence. Six witnesses more are to be sworn.

I believe the petition will prove but too true, for I talk with nobody of it, but they cry out upon the Lady Katherine Scot for a very common, &c. as can be.*

I took not much notice (nor nobody else) what other Committees sate.

Monday, January 12, 1656-7.

We stayed till after ten before the Speaker came. He was brought in a sedan to the lobby door, not being able to come up stairs. After prayers, with much ado, he got into the chair; but looked most piteously, and very ill he was, scarcely able to sit or speak; whereof the House were generally sensible, and so hasted to move for an adjournment.

Major Beake stood up, but was prevented from speaking, by

Lord Fleetwood, who said, that the Committee for Irish Affairs had prepared a Bill of Attainder of the rebels of Ireland, without which no purchaser or adventurer could be secured, and this was a bill of great concernment to that nation, and of absolute necessity. He desired it might be now read.

Mr. Bond. I see you are very ill, and not able to sit in that chair. I hope, in a week's time, you may recover your spirits and strength, so that we may go on with the public business of the Commonwealth more cheerfully. I desire you would adjourn for a week's time, and settle all your Bills so, that, in the mean time, they may be debated in Grand Committees, and prepared for you, or otherwise, that some other person of the long robe may be appointed, for the present, to sit in that chair, for I see you are not able to undergo it.

Sir William Strickland. I rise up to second that motion,

* See *supra*, p. 205.

that, in respect of your ease, for I see you are not able to sit in that chair, you would adjourn for a week: and I hope that ease may the better fit you for carrying on the great affairs. In all other purposes, we say, we will do this if God will. God is pleased to put a stop to our affairs, for the present, and we ought to tender your health and ease.

Major Morgan. While we are debating what to do, we lose time, and so shall do nothing. The Committee for Irish affairs have taken a great deal of pains to serve you, and have prepared that Bill which the honourable person offered you. It is of great importance; no greater can be in the whole nation, than to unite your interests and people together. It costs you now 1700*l.* *per mensem* to protect your interest there. The Irish interest grows, the English is at a stand. It is but a short bill. I desire you would give it the first reading.

Lord Whitlock. I rise up to second the motion made before, that you would adjourn for a week, in regard of your own ease, in which time your physicians are hopeful you may recover your strength. There may be some inconvenience, or loss of time, but the House may, in the interim, be framed into Grand Committees, which may do you as much service in preparing business for you against the next week, that then you may go on more cheerfully and orderly in your affairs before you.

Mr. Robinson. These motions may do well, but, I fear me, you have so much public business before you, that you cannot conveniently admit of this delay. There is a difference between those that live here and have their families in town, and us that are distant from our business, and have more need to be at home upon our own occasions, than trifling away the time thus. Let us either say we will go on with our public business, or let us say, not; that we may go look after our husbandry, which draws on now.

I doubt the state of your health will not, at present, afford to sit it out. The more you adjourn, the longer our attendance we are tied to. I desire that some might be appointed to sit in that place, till it please God to enable you for the

work. It was usual in the House of Lords to appoint a speaker *pro tempore.* I would have you chuse some of the long robe for the present, that our business may not be at a stand thus, from time to time.

Dr. Clarges. Adjourn for a week, and I doubt not but in that time you may so recover your health, as that we may join to the dispatch of the business before us. And, in the meantime, there may be as good service done in Grand Committees, by preparing business for you, as that Bill for the Scotch Union, which has laid a long time on your hands,* and other bills, will the better pass when you are united. Especially when you are going to lay a tax upon the people, it is fit you should be unanimous.

Mr. Ashe the elder. I desire, Mr. Speaker, that you would deal plainly with us in your condition; that you would declare to the House what is your indisposition. The House may think that you are in good health now, and able to sit. If you be so indisposed that you cannot sit, or that in a short time you may be able, that you would appoint some other person to be Speaker *pro tempore*, &c.

Sir Thomas Wroth. It seems to me that you are unfit to sit in that chair; but it were good it were examined how your condition is, that the House might understand your indisposition: and either chuse one in that place, *pro tempore,* or otherwise that you would adjourn for a week, and go into Grand Committees, if your physicians tell you that such a time of ease would recover your strength.

Mr. Speaker stood up, and, with tears in his eyes, said, Gentlemen, I am sorry it should be doubted, my being sick. If you please to go on, I shall sit till twelve o'clock.

Major-General Disbrowe, Lord Strickland, and *Captain Baynes,* seeing the Speaker so very ill, hastened the question, and desired the House might be adjourned for a week, and resolved into Grand Committees upon the Excise Bill, and the two Bills for the Union.

Colonel White moved that some course might be taken with

* See *supra,* p. 12, *note* †.

the women that came from Exeter.* They are not able to maintain themselves. He desired that they might be transferred over to the justices of peace, to take care of them, and dispose of them as they see occasion.

Major Beake. The company of Turkey merchants † are waiting at the door with a petition. I desire they may be called in.

Resolved, that the House be resolved into a Grand Committee, to sit all this week, *de die in diem*, upon several businesses.

Resolved, that, notwithstanding the adjournment of the House, the Grand Committee do sit.

Resolved, that on this day, and on Tuesday and Thursday next, the Grand Committee do sit upon the Bill touching the excise and new impost.

Resolved, that on Wednesday next, the House be resolved into a grand Committee upon the Act for uniting of Scotland into one Commonwealth with England.

Resolved, that on Saturday next the House be resolved into a Grand Committee, upon the Bill for uniting Ireland into one Commonwealth with England.

Resolved, that on Friday morning next the House be resolved into a Grand Committee upon matters of religion.

Resolved, that all other Committees may sit and act every afternoon, notwithstanding the adjournment of the House.

Resolved, that the debate upon the Bill for continuing and assessing of a tax for maintaining of the militia forces be adjourned until Monday morning next.

Ordered, that the Bill of Attainder of the rebels in Ireland, be read the first time to-morrow se'nnight.

Ordered, that the thanks of this House be given to Mr. Caryl, for his pains taken in assisting and carrying on the work of humiliation in this House, on Friday last,‡ and that

* See *supra*, pp. 167, 173.

† Turkey, or Levant Company, incorporated by Queen Elizabeth.

‡ See *supra*, p. 334.

Mr. Maidstone be desired to give him the thanks of this House accordingly.

Ordered, that the thanks of this House be given to Dr. Reynolds, for his great pains taken in his sermon preached before this House on Friday last, being a day set apart for humiliation to be kept in this House, and that he be desired to print his sermon, and that he have the like privilege in printing thereof, as hath been formerly allowed to others in the like case. And that Sir Christopher Pack do give him the thanks of this House accordingly.

Ordered, in the same manner, *mutatis mutandis*, (in clerk's book,) for Mr. Barker. And that Major-General Bridge be desired to give him the thanks of this House accordingly.

Resolved, that the House be adjourned until Monday morning next.

The House did adjourn itself until Monday morning next, accordingly.

Mr. Speaker left the chair.

Mr. Fowell took the chair.

The House, according to former order, was resolved into a Grand Committee, upon the additional Bill for the excise and new impost, and proceeded therein.

Mr. Robinson asked me this morning, before the Speaker came, if I took notes at Scot's Committee: I said yea. He told me he had much ado to forbear moving against my taking notes, for it was expressly against the orders of the House.* I told him how Mr. Davy took notes all the Long

* See Lu. R. (Luke Robinson), *supra*, pp. 296—299. I am not aware of any order against taking notes. Among the numerous "Orders against the printing the votes and proceedings of the House," are the following, which, with many later orders, are now every day violated.

"1641, 13th July, Ordered, that no member of this House shall either give a copy, or publish in print, any thing that he shall speak here, without leave of the House."

"1642, 22d March. Resolved, &c., that whatsoever person shall print any act or passages of this House, under the name of *Diurnal*, or otherwise, without the particular licence of this House, shall be reputed a high contemner and breaker of the privilege of Parliament, and to be punished accordingly." *Orders* (1756) p. 176.

Parliament, and that Sir Symons D'Ewes wrote great volumes; as well his own speeches as other men's, when he was prevented in speaking.*

I said, "How should young men learn arguments without their notes;" but I answered civilly. He said Mr. Solicitor Ellis was highly ruffled one time for taking notes, and was commanded to tear them in the face of the House. "It takes away," quoth he, "the freedom and liberty of men's speaking, for fear their arguments be told abroad. It was well known at Oxford that Mr. Robinson never spoke any thing against the King,"† and a great deal to this purpose, which I evaded as well as I could.

In the Inner Court of Wards sat the Committee upon the petition of the Mayor, Aldermen, and Common Council of London,‡ where Mr. Goodwin had the chair.

Two counsellors were heard on each side. The city desired that those that had the freedom to trade amongst them, might also bear offices amongst them, or fine for alderman and sheriffs, &c., they alleging that privilege and duty were so married together that they could not be separated, *qui sentit commodum*, &c.

The defendants said, it was their birth-right to be free to trade, and none ought to be compelled to accept any privilege to his detriment, and urged three chapters in *Magna Charta*,

* Sir Symonds D'Ewes, who was a member of the Long Parliament, died in 1650, aged 48. His collection of the "Journals of all the Parliaments, during the reign of Queen Elizabeth," was published in 1682.

Mr. Robinson, probably, here refers to Sir Symonds D'Ewes MSS now "preserved in the British Museum," which are said to contain "a Journal of his own Life, even to very minute particulars." See *Brit. Biog.* (1769) v. 190; *Biog. Brit.* (1793) v. 174.

Three of Sir Symonds D'Ewes's speeches have been preserved; the first "Concerning the Precedence of the University of Cambridge to that of Oxford." See *Parl. Hist.* ix. 183, 397, 427.

† So in MS., perhaps it should have been written "that Mr. Robinson never spoke, &c. but it was well known at Oxford."

‡ See *supra*, p. 176.

and the 29th chapter, *ubi nullus liber homo disseisiatur de libertatibus*, &c.*

This Committee was adjourned, but they waited a long time for Alderman Foot, which Mr. Bond took heavily out, that a Committee of Parliament should be so cheap as to wait for any one man in England.

Those that serve for the City stick close to this privilege, but I believe they will be worsted. It was said there, that this nation was falling into the rickets, the head bigger than the body. One nod of the head would command all the members. This is the high way to it, if they have an arbitrary power over men's estates, to fine them at pleasure. It is a strange power to put in one corporation.

It was said that they fined forty-four or forty-five in one year for Alderman and sheriffs, and 400*l.* or 500*l.* a-piece is ordinary. They, most an end, pitch upon such as they know will not stand; go a birding for sheriffs (as Mr. Highland said) *Vide supra*, in the debate when the petition came in.

The counsel on the defendants part, said, if the Committee knew all, they had more need restrain than enlarge the privilege of this corporation. They instanced in several unreasonable laws and customs that they had, which, if not confirmed by Act of Parliament, were unreasonable. Whereunto Mr. Allen, by the way, replied, that no unreasonable custom could be confirmed by Act of Parliament, for if unreasonable, the confirmation, as well as the custom, was void.

First grievance in the customs of London was

That of the Court of Orphans,† (which was worse than

* *Cap.* xxix. of *Magna Charta*, is on a different subject. This writer, probably, designed the renewal of the Great Charter by Hen. III. as confirmed by Edw. I. There, *chap.* xxix. ordains, among other privileges, that "No freeman shall be disseised of his freehold, or liberties, or free customs." See *English Liberties* (1719) p. 26.

† "For the management of the affairs of Orphans, which is by law under the inspection and care of the Lord Mayor and aldermen." See Hatton's "New View of London," (1708) ii. 615.

the Court of Wards) where a man can dispose of neither wife, estate, nor children, but after his death that Court questions it.*

2d. That custom of foreign bought, and foreign sold, where if a man both buy from, and sell to, a stranger, his goods so bought and sold are confiscate.

3d. Where a man may be arrested for a debt before the day of payment, upon suggestion that the security grows faint, and not sufficient, therefore the obligee may arrest the obliger for better security.

4th. Superseding of actions and judgments in the courts of justice there, and other things *quæ nunc proscribere*, &c.

In the Speaker's chamber sat the Committee for the Bill for high-ways,† Colonel Mathews in the chair.

In the middle room the Committee for Drury-house ‡ sat, and Colonel Twisleton in the chair. Major-Generals Goffe and Whalley constant attendants. No grand Committee for religion could be got together.

Captain Lister was gathering up Mr. Acklam's Committee.§

Tuesday, January 13, 1656-7.

This day the House sat again in a Grand Committee upon the Bill for the Excise, and proceeded till one.

Resolved, that the Parliament shall name commissioners for the excise, as it seems it always was in the customs, tonnage, and poundage.

* "When any freeman of London dies, leaving children under the age of twenty-one years, the clerks of the respective parishes are to give the names of such freemen to the *common crier* of this city, who, thereupon, summoneth the widow or executor to appear before the Court of Aldermen, and there to be bound to bring in an inventory of the testator's estate which they commonly allow two months time for. And, in case of non-appearance, the Lord Mayor may send his warrant, and, if such executor refuse to become bound, the court may commit him to Newgate." See "New View of London," ii. 645.

† See *supra*, p. 11. ‡ See *supra*, p. 148. § See *supra*, p. 159.

Mr. Robinson said, this was *subsidium*, an aid, a tax upon the people, wherein the Protector had no negative.

The House divided. The *Yeas* 37. The *Noes* 29. Colonel White, Teller.

In the Speaker's chamber sat the Committee for high-ways, where the Surveyor-general, an old minister,* was examined as to all his mysteries in draining and mending highways, for which it seems he has a patent from his Highness: suspended to do any thing in it, a Parliament being so near to be called. The gentleman seems to deny himself much in it, and that he respects not gain, but for the common good. He would *gratis* discover his art, which, it seems, is experienced upon Sir —— Penruddock's highways in the way to Hampton-Court.

In the middle room sat the Committee for the borders.† Mr. Fenwick in the chair; we dispatched it, and ordered Mr. Downing to report it.

In the duchy chamber sat the Committee of trade, where (if possible) Mr. Lloyd and Sir Christopher Pack would have had unvoted what was voted the 6th of January‡ for a free trade, and seemed to dispute the power of that Committee to present a Bill to the House in a matter of that consequence; till they first acquainted them with the vote that passed.

With much ado, it was resolved, that a Committee be appointed to bring in a Bill for a free trade, &c.

The business of Aulnegers, came into examination, and their mal-administration at Colchester, upon a petition thence. Council was there, but I could not stay the result.

In the Exchequer chamber sat the Committee for fens, Mr. Pedley.

(*Whitehall, January* 13.)

This day James Nayler was conveyed from Newgate to Bristol, there to receive the remainder of his sentence.§

* See *supra*, p. 294. † See *supra*, p. 12, *note*.* ‡ See *supra*, p. 308.

§ The divines (see *supra*, p. 183.) as might have been expected,

Wednesday, January 14, 1656-7.

The Grand Committee, according to former order, sat upon the Bill for uniting of Scotland into a commonwealth with England. They passed a great part of it, and upon long debate, the clause for confirmation of the privileges of boroughs there passed.*

The clause, that the people of Scotland should have no taxes nor public impositions whatsoever laid upon them, but

effected nothing in their conferences with this harmless visionary, a subject for Christian compassion from a professedly Christian legislature, rather than for cruel punishment. The Parliament, therefore, as appears by the following document, proceeded again to assert their jurisdiction, notwithstanding the late embarrassing interference of the Protector:—

"From Bristol, Saturday, January 17th.

"This day the order of Parliament was executed here upon James Nayler, in manner as is described by the following order;—

"Mr. Roach, cause James Nayler to ride in at Lamford's gate, upon a horse, bare-ridged, with his face backward, from thence along Wine Street, to the Tolzey; thence, down High Street, over the Bridge, and out of Rockley Gate; there let him alight, and bring him into St. Thomas's Street, and cause him to be stripped, and made fast to the cart-horse; and there, in the market, first whipped; from thence, to the foot of the bridge, there whipped; thence to the end of the bridge, there whipped; thence to the middle of High Street, there whipped; thence, to the Tolzey, there whipped; thence, to the middle of Broad Street, there whipped; and thence, turn into Tailor's Hall; thence release him from the cart-horse, and let him put on his clothes, and carry him from thence to Newgate, by Tower Lane, the back way."

"There did ride before him, bare-headed, Michael Stamper, singing most part of the way, and several other friends, men and women; the men went bare-headed by him, and Robert Rich, (late merchant of London) rode by him, bare-headed and singing, till he came to Redcliffe Gate, and there the magistrates sent their officers, and brought him back on horseback to the Tolzey, all which way he rode, where the magistrates were met, singing very loud."—*Mercurius Politicus*, No. 34. January 15—22.

* See *supra*, p. 12.

by common consent in Parliament, held us in debate from eleven till one. The objection against it was, that it put the people of Scotland into a better condition than those of England, and we ought to be their elder brother.

Mr. Robinson, Mr. Downing, and *Major-General Howard.* That clause and the other clause will but clog the Bill, and hinder his Highness's consent, and put a negatve in his mouth.

Lord Fiennes. The clause has no coherence with the Bill of union, so need not be part of the Bill.

Mr. Attorney of the Duchy, Sir John Hobart, and *Mr. Vincent* said, that it was a good clause, and fit to be in every Bill. They desired that, to answer the former objection, England and Ireland might be added, it being a fundamental right of the people of both nations, that no tax ought to be laid, but by consent in Parliament.

Sir William Strickland. If any act should pass this House, to restrain the people in that point, it would be a void act; for every man was born with a negative in his mouth as to that, and no Parliament can part with such a fundamental right of the people.

Some were sorry the clause was in the Bill, but, seeing it was there, they were much divided in their opinions. To reject such a clause, though but collateral to the union, might sound ill abroad. That a Parliament should discourage such a clause, was a tacit consent that taxes might be laid, out of Parliament. If it stand, then we tacitly take the tax from Scotland, and lay it upon ourselves, and so make a disunion instead of an union. Some were for passing it over, or laying it aside: others, that we might take an occasion hereby to make claim, continual claim, to our liberties, especially in disposing of property, and that it were good such a Bill were provided for the whole nation.

Captain Baynes. I hope that you will provide for securing the peace of the nation, if you lay no tax but in Parliament: for it is no pleasure to his Highness to continue assessments, but of necessity; and by the thirty-ninth article of the

Instrument of Government, he may raise 90,000*l* *per mensem.**

The debate brought forth no question, so we rose in confusion.

In the middle room sat a Committee of Scotch members, but they rose presently; another Committee, private, in the duchy chamber.

In the lobby of the Lords' House, sat a Committee for Bibles. Judge-Advocate Whalley in the chair.

There was a long paper of *errata*, amounting to two thousand, brought in by the Company of Stationers, against a Bible of Hill's, now in the press. Most of the faults were but slight, viz. in commas, points, italics, and slip of a letter, and the like.

There was one Robinson, a Scotchman, corrector of his Highness's press, a very busy person, and swelling in his own opinion, and skill in the tongues, who openly arraigned, not only the Cambridge translation of the Church Bibles, but all other bibles whatsoever now in England, as faulty, both in printing and difference from the original.

Mr. Tymbes took an occasion to say, that a Jesuit could do no more but arraign our bibles.

Lord Strickland and I were of the same opinion, and that it was of dangerous consequence to grant that, by a vote of a Committee. It would hear ill abroad.

Robinson was so nettled at it, that he questioned Mr. Tymbes, for comparing him to a Jesuit.

The Committee ordered that Robinson should be reproved sharply, which was done.

Ordered, that Mr. Hill do, within fourteen days, bring in a note to this Committee, of his amendments, and another

* The thirty-ninth Article is on the sale of the royal and episcopal lands. The thirtieth Article, to which alone this speaker could refer, authorizes no specific sum. It directs that, "until the meeting of the first Parliament, the Lord Protector, with the consent of the major part of the Council, for preventing the disorders and dangers which might otherwise fall out, both by sea and land, shall have power to raise money."—See *Parl. Hist.* xx. 259.

note of what he has not amended, to the end the Committee may consider, whether the impression may be so amended, by putting in new sheets, &c. as that the same may be published.

Resolved, that this Committee will take cognizance of no impressions of bibles, but such as have been printed within these two years; and that they will take care to suppress all bibles printed beyond seas, that the same may not be sold, and other books.

This Robinson presented Hobbes's *Leviathan** to the Committee, as a most poisonous piece of atheism.

Another, of a Jesuit's, called *The Touchstone of the Reformed Gospel*, a little book in 8vo.

There was a report from the ministers † who were appointed

* "Or the Matter, Form and Power, of a Commonwealth, Ecclesiastical and Civil, published at London, in 1651, in folio." See *Brit. Biog.* (1769) v. 7. Lord Clarendon wrote, during his exile at Moulins, in 1673, "A Brief View and Survey of the Dangerous and Pernicious Errors to Church and State in Mr. Hobbes's Book, entitled Leviathan," in which (pp. 7, 8.) are some curious particulars respecting that publication.

Hobbes, in his Latin Autobiography, describes the odium he incurred from the divines who attended Charles's court at Paris, though he is silent respecting this complaint to the Parliament, which, probably, led to no further proceedings.

The author, referring to the opposite characters given to his *Leviathan*, by some admired, as *insolitum miraculum*, by others abhorred, as *monstrum horrendum informe*, thus fairly determines. "Fruatur quisque suo per me sensu licet; mihi nec alienum philosophandi libertatem circumscribere, neque propriam prodere, animus est." (Let every one enjoy his own opinion, I would neither restrain another man's liberty of philosophizing, nor surrender my own.) See "Thomæ Hobbes Angli Malmsburiensis Philosophi Vita. *Carolopoli.* apud *Eleutherium Anglicum*, sub signo veritatis," (1681) p. 81.

† I find in *Whitlock*, "1649, September 20. Resolved, that the *Singing Psalms*, be not, for the future, printed with the Bible." Till this time, probably, or, at least, till the war between Charles and the Parliament, the version of Sternhold and Hopkins, which was partially superseded, in 1696, by that of Tate and Brady, had been universally adopted, on royal authority.

Wood, in his article *Thomas Sternhold*, (who died in 1549) thus describes the origin of English protestant psalmody. *Sternhold* "being a most zealous reformer, and a very strict liver, he became so scandalized at the amorous and obscene songs used in the court, (of Edward VI.)

to consider which version of psalms was fittest to be publicly used. Their return was, that Mr. Rous's * version was the best, both as to agreeing with the original and better metre; and that Mr. ——'s † version was a good one too. They desired he might be recompensed for his pains.

We sat till seven. Adjourned to Monday.

Major-General Bridge is very zealous in this business of the psalms.

(*Whitehall, January* 14.)

It hath been ordered by his Highness and the Council, that Mr. Rogers, who was committed to the Isle of Wight,‡ and Mr. David Jenkins, commonly known by the name of Judge Jenkins,§ be set at liberty.

that he, forsooth, turned into English metre fifty-one of David's psalms, and caused musical notes to be set to them; thinking thereby that the courtiers would sing them, instead of their sonnets, but did not, only some few excepted. However, the poetry and music being admirable, and the best that was made and composed in those times, they were thought fit to be sung in all parochial churches." *Athen. Oxon.*, (1691) i. 62.

* Francis Rous, M. P. for Cornwall, and Provost of Eton College. He had published in 1646, by order of the Parliament, "The Psalms of David translated into English metre." *Athen. Oxon.*, (1692) ii. 149.

† Probably William Barton's. See *Ibid.*

‡ *Mercurius Politicus*, No. 344. From the following, it appears that this prisoner had excited some public interest:—"Mr. Rogers, preacher, being released by order of his Highness and the Council, from the Isle of Wight, came this Wednesday, Jan. 21, about three of the clock in the afternoon, into London." *Ibid.* No. 345.

Whitlock reports "October, 1655. Orders for accommodation of Mr. Feake, and Mr. Rogers, prisoners."

Wood, (at the close of his article *Harrington*) has a large account of John Rogers, whom he describes as "a notorious fifth-monarchy man and anabaptist, with Christopher Feake, the *Coryphæi* of their party." He was imprisoned in 1654. *Athen. Oxon.* (1692.) ii. 442.

§ One of the Welsh Judges, who, according to *Wood*, became obnoxious to the Parliament for his conduct on the circuit. Taken prisoner at Hereford in 1645, he was first committed to the Tower, then to Newgate, from thence "translated to Wallingford Castle," and now released from

Thursday, January 15, 1656-7.

The Grand Committee upon the Excise Bill sat, and dispatched all till they came to the polling clause.* Some cried for the question, to throw it out, but there it sticks. Colonel Briscoe told me, that Mr. Godfrey and others thought that the clause debated upon in the Scotch Bill, viz. that no taxes nor public impositions should be laid upon the people of this commonwealth, but by common consent in Parliament, would do better in this Bill than in any other, for this must have an affirmative from his Highness. Others might be more likely to receive a negative. I wrote in the office.

I know not what Committees sat this afternoon, for I was upon visits to Mr. Speaker, who was loth to be seen, and with Cousin Hilton till past eight, and came home in the rain, &c.

Friday, January 16, 1656-7.

The Grand Committee for religion, sat both forenoon and afternoon;† but it rained terribly, so I stirred not out all day.

Windsor Castle. *Wood*, a bitter foe of Lord Clarendon, says "he might have been one of the Judges in Westminster Hall, after the Restoration, would he have given money to the then Lord Chancellor." Judge Jenkins died in 1663, aged more than 81. *Athen. Oxon.*, ii. 212.

* See *supra*, pp. 292, 293.

† The most important business of this Committee, *Whitlock* has thus preserved:—

"January 16. At the Grand Committee for religion. Ordered, that it be referred to a sub-committee, to send for, and advise with Dr. Walton, Mr. Hughes, Mr. Castle, Mr. Clark, Mr. Poulk, Doctor Cudworth, and such others as they shall think fit, and to consider of the translations and impressions, and to offer their opinions therein to the Committee, and that it be especially commended to the Lord Commissioner Whitlock to take care of this business."

In consequence of this order, "February 6, there was a great meeting of learned men, at Whitlock's house at Chelsea. This Committee often met, and had the most learned men in the oriental tongues to consult with, in this great busi .ess, and divers excellent and learned observations

Saturday, January 17, 1656-7.

The Grand Committee upon the Bill for the Union of Ireland, sat according to former order. That clause about quitting that nation of custom (which indeed is the main of all) held till one, but we came to no resolution, only referred it to a sub-committee. It was a very great Committee indeed.

It was there moved, that all that come may have voices; but ruled, that, by the orders of the Committee, no Grand Committee can grant that without particular leave of the House.

Mr. Bodurda further moved, that Mr. Robinson the Chairman might be of the sub-committee, but he ruled it was not parliamentary. Query that also.

In the painted chamber, sat the Committee for Mr. Scot, Mr. Bampfield in the chair, who stayed late, because he dined with Lord Fleetwood.

Mr. Judico Sedgwick and Mr. Green were counsel for the plaintiff, Mr. Finch only of counsel for the lady, the defendant.*

The Committee adjourned the further examination, till Saturday, at two.

I minded not much what other Committees sat. There was most of the House, and abundance of gentlemen of quality. One young lord, who would needs keep on his hat, was there.

of some mistakes in the translation of the Bible in English; which yet was agreed to be the best of any translation in the world. Great pains were taken in it, but it became fruitless by the Parliament's dissolution."

Whitlock adds, " February 16, Dr. Walton published the Polyglot Bible." It appears that the Protector, as the Parliament had done before, remitted the duty on the paper imported for this work. " *Chartam a vectigalibus immunem habuimus,*" says Dr. Walton, at the conclusion of his preface.

* The testimony of five witnesses follows, through several pages, (see *supra*, p. 341.) in a detail amply sufficient " to prove the petition," but here suppressed for the reason assigned, *supra*, p. 336, *Note*.

Monday, January 19, 1656-7.

Mr. Robinson reported from the Grand Committee upon the Bill for uniting of Ireland into one Commonwealth with England,* that the said Grand Committee do desire the House will appoint another day for the said Grand Committee to sit.

Ordered, that the House be resolved into a Grand Committee, upon the Bill for uniting Ireland into one Commonwealth with England, on Wednesday morning next.

Ordered, that the House be resolved into a Grand Committee, upon the Bill for uniting Scotland into one Commonwealth with England,† on Friday morning next.

The humble petition of John Buck, Esq. was this day read.

Ordered, that this petition be referred to the Committee to whom the petition of Mr. Scot is referred, and that this Committee, as to this business, have power to send for persons, papers, witnesses, and records; and that it be referred to this Committee to prepare a Bill to this House concerning divorces and alimony, and where it is fit to place the same.‡

Mr. Bodurda. You have had two letters from his Highness, to which you have returned no answer. I have a report upon one of them, which I have had in my hand this month almost, touching the Cheshire brigade.§ I desire it may be read. But he was called down, in regard (as *Mr. Speaker* said) he knocked the former business on the head, which was a good business.

Lord Fiennes brought in a petition from the University of Oxford.

Resolved, that it be read.

It was, that scholars should not be troubled with suits at

* See *supra*, p. 12, *note* *.
† See *supra*, p. 6, *note* †.
‡ I have not found in the *Journals* any result of this reference.
§ See *supra*, p. 200.

law, concerning their discipline, but that the same might be determined by their visitors.

Mr. Speaker. I do not remember that ever the University had such a privilege, that the Courts of Justice should not be judges of their privileges. If they aim at that, they will be mistaken.

Lord Chief-Justice. This complaint ariseth from a suit depending in the Upper Bench, in the case of one Herne, who was duly elected a Fellow of All Souls, where, upon his application to us, we granted a *mandamus*, as was warrantable by former precedents, in a case lately before Lord Rolle, in a serious debate. We are, by our oaths, bound to grant process in such cases.

Mr. Robinson and *Lord Strickland* moved, that this might be referred to a Committee to consider of this business. Haply, it may concern freehold.

Per Mr. Bond.

Resolved, that it be referred to Corpus Christi College Committee.

Lord Fiennes and *Sir William Strickland* moved, that all the proceedings at law may be stopped till the Committee have considered of this business.

Mr. Speaker. The proceedings at law ought not to be stopped upon this petition. I desire not to hinder it, but it comes in very irregularly, for here is no hand to it, not so much as the Vice-Chancellor's, or any others. A private person cannot do it.

Mr. Secretary. I rise up to acquaint you with the discovery of a late heinous plot, which is in part discovered, and we are in pursuit of the rest.

The place where that design was hatched is in Flanders, a place fit for such designs of assassination, at the Spanish court there. Two parties are in it, the old malignant, and the levelling party. It is carried on by one Sexby* there.

* Colonel Edward Sexby, whom Lord Clarendon (*Hist.* iii. 369.) describes as an agent of the Levellers, and in that capacity as introduced to Charles II. Colonel Sexby, who died a prisoner in the Tower,

Three of them we have taken. First, one Cecil, a late trooper: second, one Sindercomb, who was in the mutiny in Scotland, and disbanded. The proof was not then full enough against him to hang him: I hope it will now be sufficient. Third, one John Toope, who was trusted to be of the Life-guard. He discovered it to us the same night it was to take effect. It will be made out that both parties were privy to it. Toope and Cecil have confessed something upon their examinations; but Miles Sindercomb stands mute. I hope we shall discover more of them.

Read, the examinations taken before Colonel White and William Jesop, Justices of Peace, at Westminster, January 8, 1656-7.

1. The examination of John Cecil read.

2. The examination and information of John Toope read.

Mr. Secretary. These are all the examinations that we have taken in this business. We are in further pursuit of the discovery. This Boys is the chief agent. He is now in Flanders. It is likely that it is not his name, but he is a considerable person of the late King's party; who, I believe, will be found implicated in this assassination. This will appear by a discovery, in part, by a paper found about Sir Thomas Peyton, now a prisoner in the Tower; who, being suspected to hold close correspondence with Charles Stuart, was searched by one John Rogers, a soldier appointed to search his chamber for papers.

The examination of John Rogers read by the clerk.

Searching for papers in Sir Thomas Peyton's chamber, the gaoler's daughter being there, he conveyed the papers to her, which were taken upon her, and sworn before Sir John Barkstead, as to the paper.

Mr. Secretary read the paper himself, in regard it was torn. He had read it three or four times, and desired he might read it. This paper was found the 6th of December last, whereupon Sir Thomas Peyton was sent for, and all that he would

about January, 1657-8, has been attributed *Killing no Murder,* though that famous pamphlet is more generally ascribed to Colonel Titus.

say to it, is in this paper, which the clerk read. He confessed such a paper came to his hand writ upon the top of it, the 30th of December. He conceived it to be of dangerous concernment. But how it came to him? It was by a porter from Blackfriars, as he believes, in regard he demanded monies for it.

Mr. Secretary desired the papers back again, in regard they were the originals, which were delivered back.

Mr. Secretary's report thus entered in the clerk's book.

Mr. Secretary made a relation of a wicked design to take away the Lord Protector's life, and to fire Whitehall, and presented the examinations of John Cecil and John Toope, taken upon oath before Francis White and William Jesop, Esquires, two of his Highness's Justices of Peace for the liberty of Westminster, which was read.

Mr. Secretary also made another relation of another design, and presented the examination of John Rogers of the Tower of London, gentleman, taken upon oath the 8th day of December, 1656, before Sir John Barkstead, Knight, and the examination of Sir Thomas Peyton, taken the 8th of December, 1656, which examinations were delivered back to Mr. Secretary by order.*

Sir William Strickland. We are obliged to give thanks to God for this and all other deliverances, without whose providence a hair cannot fall from our heads. It is not improbable that the Levellers† and the Cavaliers may join together in this assassination, or any other wicked thing, to overthrow the Government. We cannot be too thankful for such a mercy; which was extended to us, as well as to his Highness. I cannot tell what to say to it, but would have it transferred back again, that the offenders may be all discovered and punished.

Judge-Advocate Whalley. I thought it my duty, hearing of some of the names of the plotters, as Colonel Overton, to say what I know of my own knowledge; and do affirm that when General Monk, and some other officers, with myself, went to search Colonel Overton's chamber, we found a sealed paper,

* See *Appendix,* No. 1. † See Vol. i. p. 49, *note.*

wherein was expressed that 600*l*. was distributed to six several persons, who should have murdered my Lord Protector.* I thought good to acquaint you.

Mr. Nathaniel Bacon. I know not what to say to it, but that we should solemnly give thanks to God for this deliverance; which, certainly, was not only a deliverance to his Highness, but to us all. I believe none of us that sit here had been safe, if this design had prospered. It has pleased God to add this to our former mercies, and we ought to appoint a day of thanksgiving for it; but whether public or private, I shall not determine, but do think private best.

Mr. Drake. It was a public deliverance, I desire the thanksgiving may be suitable, and a public thanksgiving day to be appointed.

Mr. Highland. You should discover more of the plot before you appoint a day of thanksgiving, especially if you make it public. It may prevent further discoveries.

Lord Broghill. This is a sufficient experience of mercy whereupon to ground a thanksgiving. It will be a means to stop the mouths of your enemies; both Charles Stuart† and

* Colonel (Major-General) Overton was, like *Ludlow*, a consistent Republican, who had refused to support the usurpation of Cromwell. Being now a prisoner, it is remarkable that he was not brought to trial under such a charge.

Ludlow having mentioned "the Cavalier plot," in 1655, says, "It was also pretended that Major-General Overton, with some officers of the army in Scotland, designed to seize upon Monk, and to march with that army to London, for the restitution of the Parliament. Upon suspicion of which he was seized and sent prisoner to London; where he was committed to the Tower." *Memoirs* (1698) p. 532.

Ludlow further says, that "to prevent Major-General Overton from the benefit of a *Habeas Corpus*, for which Cromwell was informed he intended to move—he sent him in custody to Jersey, with the hazard of his life, and to the great prejudice of his estate." *Ibid.* p. 533.

The order for "secure imprisonment in the castle of Jersey," was "given at Whitehall, Jan. 8, 1657-8," a year after the charge by the Judge-Advocate, "of an attempt to procure the assassination of the Protector." Feb. 26, 1658-9, this commitment was voted by the House "illegal and unjust." See *Parl. Hist.* xxi. 293, 295.

† Considering what this speaker had been, and what he afterwards became, under his now exiled prince, this expression is remarkable; espe-

the rest, to hear that the representatives of the three nations have such a sense of this deliverance, that they do appoint a day of thanksgiving for it. It is a mercy very thanks-worthy.

The question being put for appointing a day of public thanksgiving, some would have one day for London, and hereabouts, and another day for remoter parts.

Mr. Highland. It is an universal mercy, and it ought to be universally observed upon one day, by all the three nations. It was so in scripture. They appointed one day for all. I desire we may observe that rule. Again, it is not convenient for countrymen that come with their cloth, and other things, to London, upon such a solemn day here, they knowing nothing of it. They lose their market. I desire that it may be upon Thursday fortnight.

Sir John Reynolds moved that it might be upon Thursday three weeks.

Mr. Speaker. That is the last day of the term, and you cannot appoint that day. I thought good to mind you of it.

Sir Christopher Pack. Thursday and Friday are the days when carriers come in.* I desire it may be upon a Tuesday.

Sir Gilbert Pickering. I move, that it may not be deferred so long, for we give way for another plot before the appointed day come. I desire it may be this day sennight.

The question being put, whether the question should be put to appoint this day sennight, it passed with the negative.

Resolved, that Friday, come three weeks, being the 13th of February, be appointed a day of public thanksgiving for the three nations.

Mr. Bond. I move, that the thanksgiving may be within these walls. I can profit more here than abroad.

Major Beak. It is against the nature of thanksgiving to keep a day in private, but I hope that will be overruled. I de-

cially as, about this time, Lord Broghill is said to have been persuading the Protector to restore *Charles Stuart,* on the condition of the King's marriage with one of Cromwell's daughters.

* Referring to the necessary occupations of tradesmen on those days.

sire Mr. Warren may be one of those to preach that day, and that the place may be Margaret's, Westminster.

Alderman Foot desired Dr. Reynolds might preach.

Exceptions were taken to his low voice.

Aldermon Foot. If so, then I desire Mr. Jenkins * may be appointed; for why need we fetch them out of the country, having enough about us to do the duty?

Mr. Maidstone and *Major Haines* moved, that Mr. Warren might be one to preach; for Dr. Reynolds's voice is too low, and so Mr. Caryl's.

Lord Strickland. It is strange we should not hear as well now as we did fourteen years ago.

Mr. Robinson. Ministers tell us our faults. It is fit we should tell them theirs. Their reading of sermons † makes their voice lower. I doubt we are going to the episcopal way of reading prayers too.

Mr. Church moved that Mr. Mead ‡ might preach for one, and that charity might be better observed than when the fast

* William Jenkin, M.A. styled by Baxter, "a sententious, elegant preacher." He had been involved in Love's plot in 1651, but pardoned. He was now Minister of Christ Church. See Granger's *Biog. Hist.* iii. 316. Mr. Jenkin had preached before the House on the fast-day, at the meeting of this Parliament.

† This was an innovation, and contrary, I believe, to an University Statute, obsolete, though unrepealed. Bishop Burnet (*Pastoral Care*, c. ix.) considers "the difference between the reading and speaking of sermons," adding that "reading is peculiar to this nation, and is endured in no other."

Burnet, according to his son's account, was always an extemporary preacher, except "in 1705," when "he was appointed to preach the thanksgiving sermon before the Queen, at St. Paul's; and, as it was the only discourse he had ever wrote before hand, so this was the only time that he was ever at a pause in preaching." *Life*, O. T. (1734) ii 721.

To Burnet's early and deserved celebrity, Mr. Evelyn has recorded the following testimony, "1674, 15 Nov. I first heard that famous and excellent preacher, Dr. Burnet, with such a flow of eloquence, and fullness of matter, as showed him to be a person of extraordinary parts." *Life*, 4to. i. 415.

‡ Matthew Mead, minister of Stepney, ejected in 1662. He was father of the celebrated physician.

was last kept in the House. Nothing was given at the door to the poor.

Sir John Reynolds. I shall appoint both place and a person, if you please:—Margaret's, Westminster, and Dr. Owen to preach.

Resolved, that Margaret's, Westminster, be the place.

Lord Cochrane desired that Mr. Galaspy might preach. He said he used not to read his sermons.* He said something of an evil man that read his sermons. This caused laughter.

Mr. Butler and *Lord Whitlock* would have had Whitehall Chapel appointed for the place, because the deliverance was thence.

Dr. Clarges, Sir William Strickland, and *Lord Strickland* moved, that Mr. Galaspy be desired to preach, as was moved by that noble lord, who, I perceive, is a very godly man.

Resolved, that Mr. Galaspy be desired to preach before the House on that day, and Lord Cochrane to give him notice.

Resolved, that Mr. Warren be likewise desired to preach before the House, at the same time and place, and Major Haines to give him notice.

Resolved, that a Committee be appointed to bring in a narrative of the grounds of the thanksgiving.

Resolved, that his Highness's concurrence be desired thereunto.

Sir Gilbert Pickering and *Major-General Boteler,* moved that Wednesday afternoon may be the time appointed to wait upon his Highness, the whole House, to congratulate his deliverance.

Mr. Robinson was against going to his Highness in that manner.

The Master of the Rolls. This will be a very good expedient to let the world see that there is a right understanding between his Highness and us, and that we are cemented. It will be much satisfaction, that we have such a sense of

* He was, no doubt, one of the ministers of the Scotch Kirk. Then, and till very lately, like the continental divines, they preached *memoriter*, notes being expressly prohibited by a direction in the *Covenant*.

this blessing, that we should go in a body, and congratulate his Highness's safe deliverance.

Mr. Highland proposed to prepare the narrative first, and then go to his Highness to congratulate the deliverance.

Lord Broghill. I should have been for waiting upon his Highness to congratulate this mercy, if it had not been moved before. Now it is afoot, I would not have it laid aside, but that a day may be appointed to this purpose, to wait upon his Highness.

Lord Whitlock. I would not have us take an occasion, from going to his Highness, to desire his consent to the Declaration. It cannot be too solemn a congratulation. I would have us appoint a time on purpose. It was never known that ever the whole House waited upon his Highness for his consent to any business.

Lord Chief-Justice Glynn. We cannot do this too solemnly. I desire that a Committee may be appointed to attend his Highness, to know when this House shall wait upon him, to congratulate with him for this deliverance.

Mr. Speaker. I desire you would direct me what I should say to his Highness. Haply, I may be surprised, as before we were. His Highness may appoint to-morrow morning. Unless you will have me to say nothing but what you shall formate * to me.

Sir Gilbert Pickering. If it were not against the orders of the House to call up any man to speak, there was a very good pattern propounded to us as to the manner of addresses to his Highness, upon another occasion, about three or four months ago. I confess I liked that method well, as a means to unite and procure a right understanding between us and his Highness. I wish we might follow that way. I remember very well what this speech was, and who spoke it.

It was Major-General Goffe, upon the debate about the thanksgiving for the late victory from Spain.† It was a long preachment, seriously inviting the House to a firm, and a kind

* A verb now obsolete.

† The taking of two ships of "the king of Spain's West India Fleet," September 9.—See *Journals*, October 2, 1656.

of corporal union with his Highness. Something was expressed as to hanging about his neck like pearls, from a text out of *Canticles*, &c.*

Resolved, that this House do wait upon his Highness, the Lord Protector, to congratulate with his Highness for this great mercy and deliverance.

Resolved, that the Committee appointed to prepare the narrative of the grounds and reasons of setting apart Friday three weeks, for public thanksgiving, do attend his Highness, the Lord Protector, to desire his Highness to appoint a time when this House may attend his Highness upon this occasion.

Major-General Goffe stood up once to offer some words to the former question, but I believe he had a good mind to answer Sir Gilbert Pickering's call, as tickled, &c.; and so stood up again a little after, and expressed, that this application was very seasonable, and no doubt would gain the ends of a firm union between his Highness and us, to the discouragement of our enemies. He desired that the Speaker might express our sense of the former deliverances of his Highness, as well in public as private, and that it might also look forward to his preservation, whereupon much of ours did depend. He repeated something of his former preachment, but I remember not.

Mr. Ashe, the elder. That which the gentleman has moved, will do very well for your directions, as to the first part of your speech. I would have something else added, which, in my opinion, would tend very much to the preservation of himself and us, and to the quieting of all the designs of our enemies;—that his Highness would be pleased to take upon him the government according to the ancient constitution;†

* It is most probable, that the Major-general, indulging a taste now justly exploded, had applied to his successful commander the following passage, (*Canticles* iv. 4.) replete with military allusions;—"Thy neck is like the tower of David, builded for an armoury, whereon there hang a thousand bucklers, all shields of mighty men."

† The first hint of the project for making *Cromwell* king.

so that the hopes of our enemies' plots would be at an end. Both our liberties and peace, and the preservation and privilege of his Highness, would be founded upon an old and sure foundation.

Sir William Strickland. It is very late to enter upon such a debate as this. I desire you would adjourn, and take up the debate which should have come on this morning, to-morrow morning. I would not have any thing added that might clog the business. I doubt not but you will be able to express the sense of the House, when we shall wait upon his Highness.

Major-General Disbrowe. I know not what that gentleman means by his expedient for his Highness's preservation. I doubt that will be but a slender prop, without taking care to secure his enemies. That, in my thoughts, is the best fortification for all honest men. I desire you would adjourn till to-morrow, and then take up the debate upon the Bill before you.

Mr. Robinson. I understand not what that gentleman's motion means, who talks of an old constitution, so I cannot tell how we should debate upon it. The old constitution is Charles Stuart's interest. I hope we are not calling him in again.* I know not what it means. This gentleman would have his Highness to be Charles Stuart's viceroy, or some such thing. You have a Bill before you,† I would have you go on with that as the best expedient for your preservation.

Mr. Downing. I believe that motion is of more concernment to you than the Bill before you. Government is the foundation of security. I am sorry I was not at your debate in the morning. Government is not to be made by six men. Those Governments are best which are upon proof, and long experience of our ancestors, (and not such as are only in notion,) such whereby the people may understand their liberty,

* *Whitlock* relates, "May 1, 1660," (*Mem.* 700) that when the letter of Charles Stuart was read in the Convention Parliament, this speaker, Mr. Luke Robinson, formerly a fierce man against the King, did now first magnify his grace and goodness."—*Tempora mutantur*

† For maintaining the militia forces.

and the Lord Protector his privilege. The people must not be fitted to the government but the government to the people. There was a passage in the narrative, that our enemies took advantage of our unsettlement. Men go away, but constitutions never fall. This is no merriment. It is a matter which ought seriously to be weighed. When men pull down their houses that are ruinous, they try awhile by setting up shrowds, but finding them drop in, they build their houses again. I cannot propound a better expedient for the preservation, both of his Highness and the people, than by establishing the government upon the old and tried foundation, as was moved to you by a grave and well-experienced person. I shall not enter into the merits of the business, but desire this may be seriously debated, and a day appointed.

Mr. Highland. That gentleman that moved this was one of those* that was for the pulling down of what he would now set up again. That was King, Lords, and Commons; a constitution which we have pulled down with our blood and treasure. Will you make the Lord Protector the greatest hypocrite in the world, to make him sit in that place, whereby corruption, and idolatry, and superstition,——† which God has borne testimony sufficiently against, before the Protector and many of you within these walls. Can he beget a fit governor? A Parliament, a Council can choose such an one. Are you now going to set up kingly government, which, for these thousand years, has persecuted the people of God? Do you expect a better consequence? I beseech you consider of it! what a crime it is to offer such a motion as this! Do you expect a thanksgiving day upon this? I desire this motion may die, as abominable. This will set all the honest people of this nation to weeping and mourning. I beseech you, that such a thing as this may never receive footing here. I hope we have gotten from our former bondage, blindness, and superstition, that great persecution we and our ancestors groaned under.

* In the Long Parliament. See *supra*, p. 43, *note* *.

† Here some words to complete the sense, are omitted in the MS.

Captain Hatsel. I desire that you would not enter upon such a debate as this, at this time a day. It is late. Adjourn, and take it up to-morrow morning, that every one may speak his mind to it, and if it be found for the safety of the nation, it were fit it should be determined with all solemnity.

Mr. Waller. Appoint to-morrow morning for a further debate upon this business. I hope that it may be a good expedient to procure our preservation.

Mr. Bodurda. It is the opinion of those that do contrive the ruin of this commonwealth. They go upon good and rational ground, to consider what probability there is of their designs prevailing, upon the removing of his Highness's person. It is a matter that you ought to take into consideration. If it can be found for the safety of the nation, the alteration of the Government, you ought not to omit it, in order to the deliverance which you have appointed to give thanks for. If either a natural or an accidental death should happen to his Highness, as who can tell how soon, who can tell the consequence? I think it is very well worth a serious debate, and ought to precede the other. I therefore desire that we may take this debate up to-morrow morning.

Sir Thomas Wroth. I conceived the Government was so well settled before, that it needed not to admit of a debate to alter it. Yet, seeing it is so pressed upon the account of preservation, and safety of the nation, let it have a full and serious debate. I doubt not but weighty arguments may be brought, as well against as for, hereditary government. I know not what else can be meant by the motion; but I think to-morrow is too short a time. I desire you would appoint a longer day, that every man may be prepared to speak to this business with judgment and according to his conscience; and that, in the meantime, you would go on to the business before you.

Divers stood up to speak to this business, others to adjourn this debate, others cried to appoint to-morrow for the decimation Bill. The debate fell asleep, I know not how, but I believe it was by consent, (as I heard Mr. Nathaniel Bacon and others say, as they came out) and only started by way

of probation. I have not seen so hot a debate vanish so strangely, like an *ignis fatuus*. But I had forgot that,

Mr. Nathaniel Bacon spoke to it, as much as to say you have now great matters before you. You need not complain of want of business. I desire you would take them in order.

Mr. Speaker was weary, and put the other question.

Resolved, that the debate upon the Bill for continuing and assessing of a tax for maintaining of the militia, formerly adjourned to this day, be adjourned until to-morrow morning, the first business, nothing to intervene.

In the Court of Wards' chamber, sat Captain Lister's Committee,* Sir Edward Rhodes in the chair, where Serjeant Maynard was to make his defence.† When he had spoken, the Committee appointed him to have a chair set, and to keep on his hat. The reason given for that privilege was, because he was a member of Parliament. He had his counsel there besides, who pleaded for him; and Captain Lister had two counsellors, Mr. Allen and Mr. Finch. They proceeded a little, but the Grand Committee of Religion called us away.

In the middle room, sat the Committee for Hospitals, Dr. Clarges in the chair, but the Grand Committee raised them.

The Grand Committee for Religion sat till seven, upon the debate about bringing in a Bill for tithes, and a great dispute, and the House divided, whether the question should be general or particular, only to the tithes of ministers, &c., in regard a Committee of Religion had nothing to do with other matters. But it was urged, on the other side, that tithes of ministers and impropriators were so complicated, in all laws, statutes, and ordinances, that they could not be sundered. We were the greater party, three to one, so it was,

Resolved, that it be referred to a sub-Committee to consider the statutes and ordinances concerning tithes, and that they do bring in a Bill for, and amendment, and supply of

* See *supra*, p. 197.

† He appears to have been implicated only as a trustee: See the report and resolution of the House, June 6th, 1657.

such laws, for the better payment of tithes, *and other dues and duties to parsonages and vicarages.*

The last was added by Mr. Godfrey; and that was worse than before, though by him intended for the better.

Thursday last, Sir Thomas Wharton was here, and told me, that the Tuesday morning before, my Lord Wharton's* lady was delivered of a son,† which he expressed with great joy.

Tuesday, January 20, 1656-7.

Per motion of Sir John Reynolds, Mr. Ashe the elder, and Major Morgan, (who would have it now read, in regard the House was not full enough for the great debate,)

Ordered, that the Bill for the attainder of the rebels in Ireland, be read the first time, to-morrow morning, the first business, nothing to intervene.

Per motion of Dr. Clarges,

Ordered, that the amendments to the Bill for General Monk, be reported on Friday morning next.

Upon the order of the day.‡

Sir Thomas Wroth.§

* Phillip Lord Wharton, who "engaged in the service of the Parliament," says Mr. Granger, "with all the political zeal for which his family has been remarkable." On a change of times "he was imprisoned in the Tower, for calling in question the legality of the Long Parliament of Charles II." *Biog. Hist.* (1775) ii. 143.

† Thomas, who became Earl, and at length Duke of Wharton. He was among the earliest promoters of the Revolution, and was not left unrewarded by the new Government. His son Philip was the Duke of Wharton, author of the *True Briton,* whose eventful life was worn out in 1731, at the age of 32, and whose talents and eccentricities, contemporary satirists and historians have sufficiently described.

‡ On the "maintaining of the Militia." See *supra,* p. 366.

§ Here the MS., in the first of the books now remaining, ends abruptly, leaving a number of blank pages at the end of the book. In these the writer, no doubt, intended to insert the proceedings (probably during his absence from the House,) as they appeared in the MS. Journal. To fulfil what I suppose to have been his purpose, I shall conclude this volume by extracting from the printed *Journals* such passages as were of public interest, or which may tend to elucidate the previous or following pages of this Diary.

Wednesday, January 21, 1656-7.

Mr. Speaker acquainted the House, that he had received (as sent from the Council) copies of the examinations of John Cecil and John Toope, read in this House the 19th of January, instant; * and also a printed book, intituled "A True Account of the late bloody and inhuman Conspiracy, against his Highness, the Lord Protector, and this Commonwealth."†

Ordered, that the said copies of the said examinations do remain on record in Parliament; and that the said book do remain in this House.

The Lord Commissioner Whitlock reported, that the Committee appointed to wait upon his Highness, the Lord Protector, to appoint a time when this House may attend on his Highness, to congratulate with him for the great mercy and deliverance, that his Highness is pleased to give the Parlia-

* See *supra*, p. 355.

† See the "Brief Relation," *Appendix*, No. 1. The following appeared in the English prints about this time:—

"From Edinburgh, December 27. The news of the happy discovery of the late villainous assassination, intended upon his Highness's person, came very acceptable hither. If the enemy be put to these base shifts of malice, we shall the less fear them in their more public designs. That *Sindercomb* was of old one of the levelling party, that long since manifested himself to be malcontented by his mutinous behaviour several times, and for that cause he was cashiered, as some others were in this country, by General Monk.

"It seems Charles Stuart thinks his debauched, ranting remnants will hardly be able to effect any thing upon England, so long as his Highness is alive; which should induce us, and all the people of these nations, the rather to set ourselves to use our utmost endeavours for the preservation of his Highness's person, and to come to such a settlement, as may secure him and us, and after him, the preservation of this cause, and of the public peace, that it may not be in the power of any villain to aim at our confusion. If Charles, in the meantime, or any of his, dare venture over into this nation, we are in a good posture to receive them; and he will find but few here, that will meddle in his matters."—*Mercurius Politicus*, No. 347.

ment a meeting on Friday next, at eleven o'clock in the morning, at Whitehall.

The House, according to former Order, resumed the debate adjourned yesterday, upon the Bill for continuing and assessing of a tax for maintaining of the militia forces.

During this debate, exceptions were taken against words spoken by Mr. Cromwell,* as charging some Major-generals to have acted unjustly, and against law. It was desired, that they might be named; but it was put off until the main debate ended, that it might not interrupt the same.

Thursday, January 22, 1656-7.

The House, according to former Order, resumed the debate adjourned yesterday.

During this debate, some exceptions were taken at some words spoken by Mr. James Ashe, as charging several members of this House; and it was desired that he might explain himself, and declare who the persons were, and what the particulars that were charged on them. But it was put off until the end of the main debate, that it might not interrupt the main business.†

Tuesday, January 27, 1656-7.

Mr. Speaker being come to the House, and the House taking notice of his weakness of body, it was

Resolved, that, in respect of Mr. Speaker's present indisposition of body, the Lord Commissioner Whitlock be desired to take the chair, to supply the Speaker's place during his absence occasioned thereby.

The Lord Commissioner Whitlock was brought to the chair by Colonel Sydenham and Major-general Howard, and, being there set, desired, since the House was pleased to

* Probably Colonel Henry Cromwell, Junr. He was the Protector's nephew.

† The next day the House, after a short sitting, adjourned for "attending his Highness the Lord Protector."

command his service in that place on this occasion, that the House would be pleased to construe, with all candour, his words and actions therein; and that they will give him a freedom of minding them, and keeping them to the Orders of the House, for the service and honour of the House.

Resolved, that those ceremonies and respects that were used to the former Speaker, shall be used to the present Speaker, and that he have the profits due to the Speaker.*

Thursday, January 29 1656-7.

Resolved, that it be referred to the Governors of Bridewell, to take order touching James Nayler's wife coming to him, and to see that he be accommodated with convenient necessaries.†

* Inserted *verbatim*, by *Whitlock*, in his *Memorials*. (1732) p. 564.

† The persecutors of Nayler appear to have indulged in some relentings, during the few days since the publication of the following Order, "*Given at Whitehall, this* 23d *January*, 1656-7.

"James Nayler, being returned from Bristol to London, was this day conveyed to Bridewell, where he is to remain in custody, without being visited or relieved by any; neither is he to have the use of pen, ink, or paper, or to be allowed anything but what he gets by his own labour; and this to continue till he shall be released by Parliament." *Public Intelligencer*, p. 1149, No. 67, January 19, —26.

Since the *note* * was printed, *supra*, p. 246, I have found, at the British Museum, a volume, containing, among other unpublished MSS., of which I shall avail myself, the following exact form of the Protector's letter:—

"O. P.

"R. Trusty and well-beloved, we greet you well. Having taken notice of a judgment lately given by yourselves against one James Nayler, although we detest and abhor the giving or occasioning the least countenance to persons of such opinions and practises, or who are under the guilt of such crimes as are commonly imputed to the said person; yet we being intrusted in the present government, on behalf of the people of these nations, and not knowing how far such proceedings (wholly without us) may extend, in the consequence of it, do desire that the House will let us know the grounds and reasons whereupon they have proceeded."

"Given at Whitehall, the 25th of December, 1656." MSS. Additions to *Ayscough*, No. 6125, p. 284. See *infra*, p. 384.

Friday, January 30, 1656-7.

The House, according to former Order, did take into consideration the business of the exceptions to some reflections in the late debate.*

The words were contained in a paper, which was read.

Mr. James Ashe, standing up in his place, did, by leave of the House, explain himself upon part of the paper, denying the words to have been spoken by him, as they are there expressed, but repeated the words by him spoken.

Upon the other parts of the paper, he did also explain himself at several times.

The Member of the House, who took the exceptions, declaring to the House that what had been now said by Mr. Ashe, he took for satisfaction, and the House being thereupon satisfied, the same rested.

Resolved, that the sum of 400,000*l.* shall be raised for carrying on the war with Spain, and other affairs of the Commonwealth, and that it be referred to a Committee of the whole House, to consider of the way how the same may be most speedily and effectually raised.

Saturday, January 31, 1656-7.

Ordered, that the Petition concerning the poor of Westminster, and the suburbs, be read on Monday morning next.

A declaration, setting forth the grounds and reasons for setting apart Friday, the 20th day of February, for a day of public thanksgiving, was this day read.

Resolved, that the day of thanksgiving be on Friday the 20th of February next.

Resolved, that this clause be inserted; viz. that all ministers in their respective congregations be required to publish this narrative on the Lord's Day before the day of public thanksgiving.

Resolved, that they be exhorted on all occasions, in their

* See *supra*, p. 369.

prayers in the public congregations, to pray for the Lord Protector and all that are in authority in this Commonwealth.

Monday, February 2, 1656-7.

Mr. Drake reported from the Committee, that having attended his Highness with the Declaration, his Highness hath given his full and free consent thereunto.

Ordered, that the Declaration be forthwith printed and published, and that the same be sent to the sheriffs of the respective counties and shires, who are requested to take care that the same be delivered to the ministers of the respective parishes and congregations.

Ordered, that it be recommended to the Council, and that they be desired to give order for the sending abroad the Declaration through England, Scotland, and Ireland.

Resolved, that the Court of Exchequer be required to forbear any suspensions or discharges of recusants' estates, until the Bill concerning recusants be here taken into consideration and passed.

Monday, February 9, 1656-7.*

The remonstrance and humble petition of Susannah Bastwick, a distressed widow, the relict of John Bastwick, doctor of physic,† in the behalf of herself and her four children, was this day read.

* On the preceding sitting, Feb. 7, there had been introduced a great number of private, and especially naturalization Bills. "That day," says *Whitlock*, was "appointed for the reading of private Bills in favour of me, the present Speaker." *Memorials* (1732) p. 654.

† John Bastwick was born at Writtle, in Essex, 1593. After an education at Cambridge, he travelled, and commenced M.D. at Padua. On his return, he became a physician at Colchester.

In 1633, he printed, in Holland, for dispersion at home, a Latin treatise entitled *Elenchus Religionis Papisticæ,* with an Appendix called, *Flagellum Pontificis et Episcoporum Latialium.* For these books, which were ordered to be burned, he was sentenced in the Star Chamber to

Ordered, that this Petition be referred to a Committee, to examine the matters contained in the Petition, and to consider

pay a fine of 1000*l.*, to be excommunicated, debarred his practice of physic, and imprisoned till he made a recantation.

During this imprisonment, he published *Apologeticus ad Præsules Anglicanos*, and 'The New Litany.' For these he became, in 1637, a fellow-sufferer with Prynne and Burton, under a cruel sentence of the Star Chamber, which appears to have been cruelly executed; for, besides the bloody mutilations which succeeded, the pillory was so placed, as we learn from a spectator, that "all their faces looked southward, the bright sun, all the while, for the space of two hours, shining upon them."

"The Lord Cottington's censure" was in these words:

"I condemn these three men to loose their eares in the Pallace-yard at Westminster, to be fined 5,000*l.* a man to his Majestie: and to perpetual imprisonment in three remote places of the kingdom, namely, the castles of Carnavan, Cornwall, and Lancaster."

At "the execution of the Lords' censure," June 30, these victims of the Court had "their way strawed," by the sympathising people "with sweet hearbes from the house out of which they came, to the pillory, with all the honour which could be done unto them."

I here quote a scarce 4to. pamphlet, "printed in the yeere *1637*," entitled "A Briefe Relation of certain speciall and most materiall Passages and Speeches in the Starre-Chamber, occasioned and delivered June 14, 1637, at the censure of those three worthy gentlemen, Dr. Bastwicke, Mr. Burton, and Mr. Prynne, as it hath been truely and faithfully gathered from their own mouthes by one present at the sayd censure."

According to this *Briefe Relation*, Dr. Bastwick thus addressed the Lord Keeper (Cottington).

"My lord, here is my answer, which, if my Counsel be so base and cowardly that they dare not signe it" (according to the forms of the Court,) "for fear of the prelates, yet I tender it upon my *oath*. But if all this will not prevail upon your Honours to peruse my bookes and heare my answer read, which here I tender upon the word and oath of a soldier, a gentleman, a scholer, and a physician, I will cloath them in Roman Buffe" (the latin language) "and disperse them throughout the Christian world, that future generations may see the innocency of this cause, and your Honours' unjust proceedings in it; all which I will do, though it cost me my life."

November, 1640, on the meeting of the Long Parliament, when Laud's day of reckoning was come, and that of his royal master was rapidly advancing, Dr. Bastwick was immediately released from St. Mary's Castle in Scilly, whither he had been removed from Cornwall, and where "his

of some effectual way for relief and satisfaction of the Petitioners, and to report their opinion to the House.*

Tuesday, February 10, 1656-7.

The question being propounded, that leave be given to the members of this House to speak again concerning the vote of this House passed on Saturday last, whereby it was resolved, that it be referred to the Grand Committee to consider of a clause in the preamble or other part of the Bill,† "for asserting the rights of the people, that no money ought to be levied without common consent in Parliament."

The *Yeas* went forth.

Yeas 82. Captain Mason and Mr. Hampden, Tellers.

Noes 58. Colonel Rouse and Colonel White, Tellers.

So it was resolved, that such leave be given.‡

wife was not permited to have any access to him, nor even suffered to set foot in the island."

He landed at Dover, Dec. 4, "was loaded with presents, and received every where with acclamations of joy," being "met by great crowds of Londoners, with boughs and flowers in their hands." Feb. 21, the proceedings against him were voted illegal, and the sentence was reversed. It was proposed, for reparation of his losses, that he should receive 5000*l*. out of the estates of Laud and the other Commissioners. This was never paid; and in 1644 and 1648, his case appears to have come before the House. Dr. Bastwick is supposed to have died at Colchester, but the year is uncertain. See *Brit. Biog.* iv. 274. *Biog. Brit.* (1778) i. 680—683.

Dr. Bastwick, according to Lord Clarendon, was, in 1642, engaged in military service, and in that capacity taken prisoner at Leicester, by King Charles. *History*, i. 697. According to *Whitlock* (p. 107), in 1644, "Dr. Bastwick was exchanged for Colonel Huddlestone."

* This day the trial of Miles Sindercom, alias Fish, came on before a jury at the Upper Bench, when he was convicted and sentenced to be "hanged on the gallows till he be half dead, and then to be cut down, and his intrailes and bowells taken out, and burnt in his own sight." On Feb. 3, the Attorney-general had been directed to prosecute; and, on the 5th, the Grand Jury found the bill, *nem. con.*

† For raising 100,000*l*. See *supra*, p. 371.

‡ On February 13, *Sindercom* disappointed the executioner of his expected work and wages by an act of suicide, probably by poison, for

Wednesday, February 18, 1656-7.

Resolved, that the Lord Whitlock have the thanks of this House, for his great and faithful service in the business of this House, as Speaker, during the absence of the present Speaker.

Resolved, that the sum of 500*l.*, expended by the Lord Commissioner Whitlock, in his embassy into Sweden, over and above what he hath received, shall be forthwith paid unto him.

Resolved, that the sum of 2000*l.* be paid unto the said Lord Commissioner Whitlock, over and above the said 500*l.*, in respect of his great and faithful service to the public in that embassy.

Ordered, that the Commissioners for the Treasury be required to pay the said several sums accordingly.

Ordered, that the Lord Commissioner Whitlock have the thanks of this House, for his great service in that embassy.

The Speaker, by command of the House, did give to the Lord Commissioner Whitlock, standing in his place, the thanks of this House, for his great and faithful service in that hazardous voyage undertaken by him as Ambassador to

which he accounted in the following paper, found in his apartment, and 'printed to a tittle just as he wrote it himself:"—

"God knoweth my heart; I do take this course, because I would not have all the open shame of the world executed upon my body. I desire all good people not to judge amiss of me; for I do not fear my life, but do trust God with my soule. I did this thing without the privity of any person in the world. I do, before God and the world, clear my keeper, my sisters, mother, or brother, or any other of my relations; but it was done alone by myself, I say by me, Miles Sindercom, 13 day, 1656."—*Mercurius Politicus.* No. 348.

"February 17th. His body was, according to law, drawn to the open place on Tower Hill, at a horse's tail, with his head forward; and there, under the scaffold of common execution, a hole being digged, he was turned in stark naked, and a stake, spiked with iron, was driven through him into the earth. That part of the stake which remains above ground being all plated with iron, which may stand as an example of terror to all traitors for the time to come."—*Ibid.*

Sweden; and likewise for his readiness and faithfulness in the service of this House, as Speaker, in the absence of the present Speaker.*

A Bill, enjoining ministers and others to perform the duty of catechising, was this day read the second time; and upon the question, committed unto the same Committee that the Bill concerning the Sabbath is referred to. And all that come, shall have voices as to this business.

A Catechism was tendered to the House, to be the Catechism to be publicly taught, and to be made part of the Bill.

Resolved, that the title of this Book shall be read.

The title of the said Book was read accordingly, in these words, viz. "The Humble Advice of the Assembly of Divines, now, by the Authority of Parliament, sitting at Westminster, concerning a short Catechism."†

Resolved, that this Catechism be referred to this Committee.

* "Sir Thomas Widdrington," says *Whitlock* (February 18th), "being informed of the great favour of the Parliament to me, their Speaker, during his absence, and the interest I had gained in the House, and that several private bills were ready to pass, and particularly for naturalizing of many strangers, and every one of them was to pay 5*l.* to the Speaker for his fee, which I would receive in case Sir Thomas Widdrington did not take his place again before the passing of those Bills; he, being desirous of the money, though to the hazard of his life, came again to the House, and took his place, though very weak and feeble.

"My friends were apprehensive of the hard measure I had, in being thus defeated, and they were sensible of my pains and dexterity in managing the business of the House, wherein I had given them great content, and they said, that in the short time of my being Speaker, by my holding them to the points in debate, they had dispatched more business than in all the time before of their sitting. They moved the House on the behalf of me, and these votes were unanimously passed." *Memorials*, (1732). p. 655.

† This Catechism, which still forms part of the established theology of the Church of Scotland, was authorized by the Long Parliament, "Die Lunæ, 15th September, 1648;" when it was "Ordered, by the Lords and Commons assembled in Parliament, that this shorter Catechism be forthwith printed and published."

Mr. Speaker acquainted the House, that his Highness hath invited all the Members of this House to dine with his Highness on Friday next, being the day of public thanksgiving, in the Banquetting House at Whitehall.*

Thursday, February 19, 1656-7.

Ordered, that this House do meet and sit at eight of the clock every morning.†

Ordered, that at ten of the clock every day, the House will take the business of money into consideration.

Resolved, that every morning, after a private Bill read, the House do receive reports from the Committees till ten of the clock.

Ordered, that the Bill for Prisoners and Creditors‡ be read the second time on Monday next.

Ordered, that Mr. Speaker do grant his warrant, to seize upon such seditious and popish books as the Committee shall appoint, under the hand of the chairman.

A Bill for an assessment upon England, at the rate of 60,000*l.* by the month, for three months, was read the first time.§

* After hearing two sermons at "Margaret's Westminster," from Mr. Gelaspy and Mr. Warren, the House partook of "a most princely entertainment. After dinner, his Highness withdrew to the Cockpit, and there entertained them with rare music, both of instruments and voices, till the evening"—*Mercurius Politicus*, No. 350.

† See vol. i. p. 37, *note*. ‡ See vol. i. p. 5, *note*.

§ The following article of intelligence may serve to show the public interest which, at this time, the growing sect of the Quakers continued to excite :—

"Westminster, February 22. This day, being the Lord's Day, the persons called *Quakers*, which were brought from Bristol with James Nayler,—viz. John Stranger, and Hannah his wife, Martha Simmons and Dorcas Erbury,—remaining yet undischarged under the custody of the serjeant-at-arms, but now somewhat altered in their carriage, went to the Abbey, morning and afternoon, where they gave ear civilly and attentively to the sermons of Mr. John Rowe, an eminent preacher, whose spiritual doctrine so far wrought upon them, that they intend to hear him

Monday, February 23, 1656-7.

Sir Christopher Pack presented a paper to the House, declaring it was somewhat come to his hand tending to the settlement of the nation, and of liberty, and of property; and prayed it might be received and read: and it being much controverted, whether the same should be read without further opening thereof,

And the question being put,

The House was divided.

The *Noes* went forth.

Noes 54. Colonel Sydenham and Mr. Robinson, Tellers.

Yeas 144. Sir Charles Wolseley and Colonel Fitzjames, Tellers.

So it passed in the affirmative, and it was

Resolved, that this paper, offered by Sir Christopher Pack, be now read.

The said paper was read accordingly, and was intituled "The humble Address and Remonstrance of the Knights, Citizens, and Burgesses, now assembled in the Parliament of this Commonwealth.*

Resolved, that a candle be brought in.

Resolved, that the debate upon this paper be resumed tomorrow morning.

again, which gives hopes that they may be rectified in their judgment." *Mercurius Politicus*, No. 350.

Mr. Rowe was an independent minister of some eminence. To his congregation had been allotted a part of the Abbey-church, as a meeting-house.

* Afterwards called the humble Petition and Advice. See it in the form in which it passed, May 26, 1657, *Parl. Hist.* xxi. 129—142.

Whitlock says, "I declined the first delivery of the Petition and Advice to the Parliament, not liking several things in it; but Sir Christopher Pack, to gain honour, presented it first to the House; and then the Lord Broghill, Glyn, and others, put it forward." *Memorials*, p. 656.

Ludlow describes this paper, as "a shoe fitted to the foot of a monarch, though at present a blank was left for the title of the single person." He adds, "Those who still retained some affection to the Commonwealth, fell so furiously upon Pack for his great presumption, that they bore him down from the Speaker's chair to the bar of the House." *Memoirs*, ii. 583, 584.

Tuesday, February 24, 1656-7.

Ordered, that the lords the judges, who are members of this House, and all the gentlemen of the long robe, members of this House, and the rest of the members of this House, shall constantly attend the service of this House, and not depart without leave of this House.

The House, according to former order, did this day resume the debate upon the Remonstrance yesterday read.

The question being propounded, that this paper shall be read to-morrow morning.

The House was divided.

The *Noes* went forth.

Noes 44. Lord Lambert and Lord Strickland, Tellers.

Yeas 100. Sir Richard Onslow and Colonel Jones, Tellers.

So it passed in the affirmative, and it was

Resolved, that the paper shall be read to-morrow morning, in parts, beginning at the 1st article after the preamble.

Wednesday, February 25, 1656-7.

The House, this day, according to former order, resumed the debate upon the Remonstrance.

The question being put, that the consideration of this paper shall be referred to a Grand Committee,

The House was divided. The *Yeas* went forth.

Yeas 63. Sir Thomas Wroth and Mr. Robinson, Tellers.

Noes 118. Mr. Trevor and Mr. Fleetwood, Tellers.

So it passed with the negative.

Resolved, that the House shall be adjourned till Friday next; and that that day be set apart to seek the Lord upon this occasion.*

Resolved, that the debate upon the paper be adjourned till Saturday morning next.

* "Friday, February 27. The Parliament kept a fast within their House, where Mr. Caryl, Mr. Nye, Mr. Manton, carried on the work of

Saturday, February 28, 1656-7.

Ordered, that the wife of James Naylor be permitted to have free access to him upon all occasions, and remain with him, if she think it necessary for his relief.

The Question being propounded, that James Nayler be removed into another room, where he may have the use of fire and candle, and air, until this House take further order,

The House was divided. The *Yeas* went forth.

Yeas 92. Colonel Sankey and Major-General Lilburn, Tellers.

Noes 95. Sir John Hobart and Mr. Barrington, Tellers.

So it passed in the negative.

The question being propounded, that a Committee be appointed to receive from the Governors of Bridewell, an account of the present condition and usage of James Nayler, and report it to the House.

The House was divided. The *Noes* went forth.

Noes 87. Lord Cochrane and Sir Edward Rhodes, Tellers.

Yeas 124. Lord Claypoole and Lord Strickland, Tellers.

So it passed in the affirmative.*

The House, according to former order, resumed the debate upon the Remonstrance.

Resolved, that no vote that shall be passed upon the debate of this paper, shall be binding to this House, until all the particulars thereof be resolved.

Thursday, March 5, 1656-7.

The House, this day, according to former order, resumed the debate adjourned yesterday upon the Remonstrance.

Resolved, that these words, "that your Highness will, for

the day, it being by way of preparation to the great business of a settlement now under debate." *Mercurius Politicus,* No. 351.

* See *supra*, p. 370, *note* †.

the future, be pleased to call Parliaments, consisting of two Houses, in such manner and way as shall be more particularly afterwards agreed and declared in this Remonstrance, once in three years at furthest, or oftener, as the affairs of the nation shall require; that being your Great Council, and in whose affection and advice yourself and this people will be most safe and happy;" shall be a part of this Remonstrance.

The question being put, that Mr. Henry Cromwell* have leave to go into the country,

It passed with the negative.

Friday, March 6, 1656-7.

The House, according to former order, resumed the debate upon the remonstrance, yesterday adjourned.

Resolved, that, when the fifth article comes into debate, not only the qualifications of the persons to be of the other House, shall then be taken into consideration, but also by whom and how the persons of that House shall be chosen: and likewise the powers and authorities of the other House.

The third article being read,

Resolved, that the words "whole kingdom" be omitted; and instead thereof, the word "people" be inserted.

The fourth article was read, and afterwards read by parts.

Resolved, that instead of these words, "Roman Catholic," the word "Popish," be inserted in the first clause of this article.†

* See *supra*, p. 369, *note* *.

† I shall here suspend the extracts from the *Journals*, to introduce, according to the practice occasionally adopted by the writer of this Diary, a transaction occurring out of Parliament, yet intimately connected with its proceedings.

The article which will occupy the four following pages, I copied *verbatim*, at the *British Museum*, from the volume of MS., described *supra*, p. 370, *note* †. After every examination in my power, I cannot find that it was ever printed. It was evidently part of a letter, and has too direct a reference to the then much-agitated question of the Protector's *Kingship*, to be here omitted.

March 7, 1656-7.

Passages between the Protector and the hundred Officers of the Army touching Kingship.

I suppose you have heard of the Address made by one hundred officers, to his Highness, yesterday se'nnight, that his Highness would not hearken to the title (King) because it was not pleasing to his army, and was matter of scandal to the people of God, of great rejoicing to the enemy; that it was hazardous to his own person, and of great danger to the three nations; such an assumption making way for Charles Stewart to come in again.

His Highness returned answer presently to this effect,—that the first man that told him of it, was he, the mouth of the officers then present, (meaning Colonel Mills); that, for his part, he had never been at any cabal about the same, (hinting by that, the frequent cabals that were against Kingship by certain officers). He said, the time was, when they boggled not at the word, (King), for the Instrument by which the Government now stands, was presented to his Highness with the title (King) in it, as some there present could witness, pointing at a principal officer, then in his eye, and he refused to accept of the title.* But, how it comes to

* I have not found before, so fully established, this curious fact of secret history; though *Ludlow* remarks, (*Mem.* ii. 477) that "some were said to have moved that the title might be King." Father Orleans also, in his *Revolutions d'Angleterre*, (1694, iii. 291) speaking of this period, (1653) says, "plusieurs vouloient qu'on luy déferast la Royauté." He commends Cromwell's policy in refusing the distinction, because "la haine qu'il avoit inspirée au peuple pour le gouvernment des Rois, luy avoit acquis le credit qu'il avoit parmi les Anglois; qu'ainsi en se faisant Roy luy-même, il ruinoit le fondement de sa puissance." Dr. Bates, referring to the same subject, says in his *Elenchus* (1676, p. 271) speaking of the Supreme Magistracy, "Nec id tamen *Regio* sub nomine in se recipere, multis licèt suadentibus, *Cromwellio* adlubescebat." (Yet *Cromwell*, though much persuaded, would not assume the title of King.)

The Protector refers, no doubt, to the transactions immediately succeeding the very mysterious resignation (December 12, 1653) of "the Little Parliament," as that Convention is called in this *Diary*: a re-

pass that they now startle at that title, they best knew. That, for his part, he loved the title, a feather in a hat,* as little as they did. That they had made him their drudge, upon all occasions; to dissolve the Long Parliament, who had contracted evil enough by long sitting;† to call a Parliament, or Convention of their naming,‡ who met; and what did they? fly at liberty and property, insomuch as if one man had twelve cows, they held another that wanted cows ought to take share with his neighbour. Who could have said any thing was their own, if they had gone on?§ After

signation, on the notice of which, Cromwell "lifted up his eyes with astonishment, and with no less seeming modesty refused to receive it." *Parl. Hist.* xx. 244.

This first proposal of Kingship must have occurred during a short interval, for, on Dec. 16, "Major-General Lambert did, in the name of the army, and of the three nations, desire the Lord-General to accept the Protectorship, to which, with seeming great reluctance, he gave his consent."

* "Cromwell," says *Ludlow*, "said it was but a feather in a man's cap, and therefore wondered that men would not please the children, and permit them to enjoy their rattle." *Memoirs*, ii. 586, 587.

† The following is a specimen of the manner in which the flatterers of a successful Usurper, not supposing him to have been the army's *drudge*, excused, or rather applauded to his face, this deed of military violence:—

"You discovered certain tokens of a perpetual domination. You found more among them like Cæsar, who retained the dictatorship, than like Sylla who laid it down. Fired with a love of virtue, and of your country, you flew to help it; and because the thing was full of hazard, you added might to right, and entering the Court with the authority of General, broke up a great, a rich, a full, a solemn Parliament, in a moment." See "A Panegyric of the Lord-General Oliver Cromwell, as presented to him by the Portuguese Ambassador," in "A Critical Review of the Life of Oliver Cromwell," (1747) p. 357.

The panegyric is there said to have been "written in Latin, as pretended by a learned Jesuit; but as more probably supposed, by the celebrated Mr. John Milton, Latin Secretary to Cromwell." This must, surely, have been a calumny on the pen of Milton.

‡ See Vol. ii. p. 67, *note* *.

§ I have in my possession a Collection of their proceedings, "printed by John Field, 1653." After examining these with some attention, as well as the *Journals* of the Commons, I may, I think, venture to assert, that there is no hint of any proposal for a community of property; so that this accusation, for any thing that appears, was entirely groundless.

their dissolution, how was I pressed by you (said he) for the rooting out of the ministry; nay, rather than fail, to starve them out.

A Parliament was afterwards called; they sat five months;* it is true we hardly heard of them in all that time. They took the Instrument into debate, and they must needs be dissolved; and yet stood not the Instrument in need of mending? Was not the case hard with me, to be put upon to swear to that which was so hard to be kept?

Some time after that, you thought it was necessary to have Major-Generals;† and the first rise to that motion (then was the late general insurrections) was justifiable; and you, Major-Generals, did your parts well. You might have gone on. Who bid you go to the House with a Bill, and there receive a foil.

After you had exercised this power a while, impatient were you till a Parliament was called. I gave my vote against it; but you [were] confident, by your own strength and interest, to get men chosen to your heart's desire.‡ How you have failed therein, and how much the country hath been disobliged, is well known.

That it is time to come to a settlement, and lay aside arbitrary proceedings, so unacceptable to the nation. And by the proceedings of this Parliament, you see they stand in need of a check, or balancing power, (meaning the House of Lords, or a House so constituted) for the case of James Naylor § might happen to be your own case. By their judicial power they fall upon life and member, and doth the Instrument enable me to control it?

These were some of the heads insisted on in his speech, though perhaps not the same words, yet the full sense; and the officers since that time are quieted,|| and many fallen from the rest."

* From September 3, 1654, to January 22, 1654-5. See *Parl. Hist.* xx. 316—431.

† See their names and districts. *Ibid.* p. 433.

‡ See *supra* p. 262, *note* ‡. § See *supra* p. 370, *note* †.

|| It appears, that about this time the Protector's friends had great reliance on the military, in reference to this question. Thus, Mr. More-

Three Major-Generals are come about for a second House, and a successor; and the Parliament having passed a previous vote, that no part of this writing or Remonstrance, which shall be passed, shall be binding, till all be done and postponed, the word (King) to be last of all.

They have gone on with much unity, and have voted, 1. That the Supreme Magistrate that now is, shall nominate the successor.

2. That his Highness will, for the future, be pleased to call a Parliament, consisting of two Houses, in such manner and way as shall afterwards be agreed and declared in this Remonstrance, once in three years at the furthest, or oftener, if the affairs of this nation shall require it, that being his great Council, in whose affections and advice, himself and this nation will be most happy.

This vote was carried without any division.*

Wednesday, March 11, 1656 7.†

The fifth article was read,

Resolved, that these words, "that your Highness will consent that none be called to sit and vote in the other House, but such as are not disabled, but qualified, according to the qualifications mentioned in the former article," be part of this Remonstrance.

Resolved, that these words, "and that they exceed not seventy in number, nor be under the number of forty," be part of this remonstrance.

land, of the Secretary's Office, in a Letter to Mr. Pell, the resident at Zurich, dated "Whitehall, March 19, 1656-7," speaking of Thurloe, says,

"He is hardly at leisure to read or think of any thing else, but the business of Kingly Government, which the Parliament has already very far advanced. The soldiery remain very faithful to his Highness, and say they will live or die with him." *Lansdowne* MSS. 755, No. 61.

For the eventual interference of the military, to disappoint this project of royalty, See Vol. ii. pp. 116—119.

* *Additional* MSS. No. 6125. pp. 285—289. † *Journals*.

The question being propounded, that the quorum of the other House shall be one and thirty,

And the question being put, that that question be now put,

The House was divided.

The *Noes* went forth.

Yeas 53, Major Burtonand Colonel Clarke, Tellers.

Noes 96, Mr. Throgmorton and Mr. Jenkinson Tellers.

So it passed in the negative.

Resolved, that the quorum of that House shall be one and twenty.

Resolved that the Lord Protector be pleased to nominate the persons to sit in the other House.

Resolved, that the persons so nominated by the Lord Protector, shall be approved of by this House, *nemine contradicente.**

* The following passage, though not Parliamentary, is worthy of being recorded, as soldiers, accustomed to wield the argument of force, rather than to ascertain the force of argument, are not often to be distinguished among the patrons of learning:—

"From Dublin, March 10. The soldiery, at a full meeting of officers, at the head quarters, *nemine contradicente*, have purchased that great magazine of learning, the late eminent Primate of Armagh's library, the benefit of which action, as it will tend to make posterity rise up and call them blessed, so will it sufficiently vindicate them from some false reports raised upon them, and give the inhabitants of Ireland hopes to see the ancient renown of this place restored, which hath so long lain buried in the grave made by the ignorance and barbarism of later times."—*Mercurius Politicus*, No. 353.

The Primate died in London, March, 21st, 1655-6. Dr. Aikin says, "It had been Usher's intention to bequeath his valuable library, consisting of nearly 10,000 books and MSS. to Dublin College, as a token of his affection to his *Alma Mater;* but the disasters of the times having nearly stripped him of all his property, he thought it his duty to make this the portion of his daughter, who had hitherto received nothing from him, and was the mother of a large family."

The soldiery paid 2200*l.* for the library, "with the purpose of presenting it to the body, for which it had been originally destined. When, however, the books arrived in Ireland, a project was adopted of keeping them apart, as the library of a new college or hall, which there was an intention of founding at Dublin; and in the mean time, they were lodged in the castle. There they lay, subjected to various depredations, when

Tuesday, March 17, 1656-7.

The House this day resumed the debate upon the remonstrance.

Resolved, that the standing forces of this Commonwealth shall be disposed of by the chief magistrate, by consent of both Houses of Parliament, sitting the Parliament; and, in the interval of Parliament, the Chief Magistrate, by the advice of the council.

Lord Whitlock reported, from the Committee to whom the clause touching the judicial power of the other House was referred, the resolves of the Committee.

Whereupon it was

Resolved, that the other House do not proceed in any civil causes, except in writs of error; in cases adjourned from inferior courts, into the Parliament, for difficulty; in cases of petitions against proceedings in courts of equity, and, in cases of the privilege of their own House.

Resolved, that they do not proceed in any criminal cause whatsoever, against any person criminally, but upon an impeachment of the Commons, assembled in Parliament, and by their consent.

Resolved, that they do not proceed in any cause, either civil or criminal, but according to the known laws of the land, and the due course and custom of Parliament.

Charles II. bestowed them upon Dublin College, of the library of which they still continue a very conspicuous part." See "Lives of Selden and Usher." (1812) pp. 300, 301.

* It appears that the Protector was now about to exercise an exclusive authority on a very important question:—

"Whitehall, March 16, 1656-7. The Council offered it to his Highness as their advice, to pass the Charter, prepared with certain powers and privileges, to the Governor and Company of Merchants trading to the East Indies, for re-establishing the said Company. Upon the perfecting thereof, certain days or times will be appointed by the said Company for subscriptions in order to the carrying on the said trade, by a united joint-stock, wherein all persons whatsoever may be admitted, upon their subscribing, to be adventurers." *Mercurius Politicus*, No. 354. See Mills's *India* (1820) i. 77, 78.

Resolved, that no final determinations or judgments be, by any members of that House, in any cause there depending, either civil, criminal, or mixed, as Commissioners or Delegates, to be nominated by that House; but all such final determinations and judgments to be by the House itself; any law or usage to the contrary notwithstanding.

Post Meridiem.

The House proceeded with the debate of the Remonstrance.

The ninth article was read.

Resolved, that these words, viz. "That such as do openly revile them, or their assemblies, or disturb them in the worship or service of God," be part of the Remonstrance.

Wednesday, March 18, 1656-7.

The House resumed the debate upon the Remonstrance.

Resolved, that the paper offered by Sir Richard Onslow be now read.

The said paper was read accordingly, and was as followeth, viz.—

"That the true Christian religion, as it shall be expressed in a Confession of Faith, to be hereafter agreed by his Highness and the Parliament, according to the rule and warrant of the Word of God, and no other, shall be held forth and asserted as the public profession of these nations."

Resolved, that the true Protestant Christian religion, as it is contained in the Holy Scriptures of the Old and New Testament, and no other, be held forth and asserted for the public profession of these nations; and that a Confession of Faith, to be agreed upon by his Highness and the Parliament, according to the rule and warrant of the Scriptures, be asserted, held forth, and recommended to the people of these nations.

Thursday, March 19, 1656-7.

The House resumed the debate upon the Remonstrance.

Resolved, that this clause, "And such who profess faith in God the Father, and in Jesus Christ, his eternal Son, the true God, and in the Holy Spirit, God co-equal with the Father and the Son, one God, blessed for ever; and do acknowledge the Holy Scriptures of the Old and New Testament to be the revealed will and word of God; and shall, in other things, differ in doctrine, worship, or discipline, from the public profession held forth; endeavours shall be used to convince them, by sound doctrine, and the example of a good conversation," be part of the Remonstrance.

Friday, March 20, 1656-7. *Post Meridiem.*

The House resumed the debate upon the Remonstrance.

Resolved, that those ministers or public preachers, who shall agree with the public profession in matters of faith, although in their judgment and practice they differ in matters of worship and discipline, shall not only have protection in the way of the churches and worship respectively, but be esteemed fit and capable, notwithstanding such difference, being otherwise duly qualified, and duly approved, of any trust, promotion, or employment whatsoever, in these nations, that any ministers who agree in doctrine, worship, and discipline, with the public profession are capable of.

Resolved, that all others, who agree with the public profession in matters of faith, although they differ in matters of worship and discipline, as aforesaid, shall not only have protection, as aforesaid, but be esteemed fit and capable, notwithstanding such difference, being otherwise duly qualified, of any civil trust, employment, or promotion, whatsoever, in these nations.

Resolved, that such persons, who agree not in matters of

faith with the public profession, shall not be capable of receiving the public maintenance appointed for the ministry.

Resolved, that such ministers, or public preachers, or pastors of congregations, be disenabled to hold any civil employment, which those in orders are disenabled to hold, by an Act intituled, "An Act for disenabling all persons in holy orders to exercise any temporal jurisdiction or authority."

Saturday, March 21, 1656–7.

Resolved, that it be offered to his Highness, as the advice of the Parliament, that his Highness will be pleased to grant a pardon, under the Great Seal of England, unto John Cecil, who was in the late plot against his Highness's person.*

Mr. Bedford reported from the Committee, amendments to the Bill touching Recusants.

Resolved, that this Bill, with the amendments, be recommitted to the same Committee.

Resolved, that it be referred to the same Committee, to consider how the people of this Commonwealth may be restrained from going to mass at the houses of the ambassadors, or other places.

Resolved, that it be referred to this Committee, that like care be taken, for suppressing Popery in Scotland, as is for England: and that they take the like care for Ireland.†

Monday, March 23, 1656–7.

The House resumed the debate upon the Remonstrance.

Resolved, that forty-one Commissioners be appointed by Act of Parliament; who, or any fifteen, or more of them,

* See *supra*, p. 355.

† An Herculean labour, yet to be accomplished. Sir W. Petty, a great authority on the subject, says, in his 'Political Anatomy of Ireland,' (1672) "there be in Ireland 8 *Papists* for 3 others." He had just before calculated, "that the *British Protestants* and *Church* have 3-4ths of all

shall be authorized to examine, and try, whether the members to be elected for the House of Commons, in future Parliaments, be capable to sit, according to the qualifications mentioned in this Remonstrance; and, in case they find them not qualified accordingly, then to suspend them from sitting, until the House of Commons shall, upon hearing of their particular cases, admit them to sit. Which Commissioners are to stand so authorized for that end, until the House of Commons, in any future Parliament, shall nominate a like number of other Commissioners in their places; and those other Commissioners to have the same powers and authorities.

That the said Commissioners shall certify, in writing, to the House of Commons, on the first day of their meeting, the causes and grounds, of their suspensions of any persons so to be elected, as aforesaid.

Resolved, that these Commissioners shall have power to examine, touching Popery and delinquency.

Resolved, that they shall have power to examine, whether the persons elected are of the age of twenty-one years.

Resolved, that they shall have power to examine touching those persons who are disabled by the Act of 17 *Caroli*, intituled "An Act for disannulling all persons in Holy Orders, to exercise any temporal jurisdiction, or authority, as public ministers, or public preachers of the gospel."*

Resolved, that they shall have power to examine touching such as are guilty of any of the offences mentioned in an Act

the lands; 5-6ths of all the housing; 9-10ths of all the housing in walled towns; and 2-3rds of the foreign trade." This enlightened political philosopher proposes the "declining all military means of settling and securing Ireland in peace and plenty." Instead of these, he recommends whatever "shall tend to the transmuting one people into the other, and the thorough union of interests upon natural and lasting principles." See *Political Anatomy* (1691) pp. 27, 29.

* To this act, which passed Feb. 14, 1641-2, and which deprived the bishops of their seats in Parliament, the King gave his assent, as it was said, on the persuasion of the Queen. It is remarkable that the legislative power of the prelacy was warmly and ably opposed, by the celebrated Lord Falkland. See "Speeches and Passages of the great and happy Parliament," (1641) pp. 188—197; *Brit. Biog.* v. 30—32

of Parliament, bearing date the 9th of August, 1650, intituled, "An Act against several atheistical, blasphemous, and execrable opinions derogatory to the glory of God, and destructive to human society, now held and propagated in this nation."*

Resolved, that they shall have power to examine touching such as are common scoffers, or revilers of religion, or of any person or persons for professing thereof.

Resolved, that they shall have power to examine touching such as have married, or shall marry a wife of the Popish religion; or hath trained, or shall train up, his child or children under his tuition or government, in the Popish religion; or that shall permit or suffer such child or children, to be trained up in the said religion; or that hath given or shall give his consent that his son or daughter shall marry any of that religion.

Resolved, that they shall have power to examine touching such, as shall deny the Scriptures to be the word of God; or the Sacraments, prayer, magistracy, and ministry to be the Ordinances of God; such as are common profaners of the Lord's day, or profane swearers, or cursers, or drunkards, or common haunters of taverns or alehouses.

Resolved, that the accusation shall be upon the oath of the informer, or of some other person.

Resolved, that a copy of the accusation shall be left by the

* See *Parl. Hist.* xix. 323—326. Milton has praised "that prudent and well deliberated Act (Aug. 9, 1650) where the Parliament defines blasphemy against God, as far as it is a crime belonging to civil judicature, *plenius ac melius, Chrysippo et Crantore*, in plain English, more warily, more judiciously, more orthodoxally than twice their number of divines have done in many a prolix volume." See "A Treatise of Civil Power in Ecclesiastical Causes." (1659). p. 17.

None of the reputed heresies among professing Christians are denounced in this Act; nor are the penalties, though severe, and little to be justified by correct notions, as to the design and limitations of Civil Power, so sanguinary as had been not unfrequent, on an imputation of blasphemy. "For the first offence, six months imprisonment—for the second, to be banished, and for returning, without licence, to suffer death."

party accusing, in writing under his hand, with the party accused; or, in his absence, at his house in the county, city, or town for which he shall be chosen, if he have any such house; or, if not, with the sheriff of the county, if he be chosen for a county; or with the chief magistrate of the city or borough, for which he is chosen.

The Lord Commissioner Lisle reported a clause to be inserted in the Remonstrance.

Resolved, that none may be suffered or permitted, by opprobrious words or writing, maliciously or contemptuously to revile or reproach the Confession of Faith, to be agreed upon by his Highness.

Wednesday, March 25, 1657.

The House resumed the debate upon the Remonstrance.

The question being put, that this clause, *viz.* "that your Highness will be pleased to assume the name, style, title, dignity and office of King* of England, Scotland, and Ireland, and the respective dominions and territories thereunto belonging; and to exercise the same, according to the laws of these nations," be part of the Remonstrance.

The House was divided. The *yeas* went forth.

Yeas 123. Sir John Reynolds and Lord Howard, Tellers.

Noes 62. Major-general Boteler and Colonel Salmon, Tellers.

So it was Resolved.†

* A blank was left here, on the presentation of the Remonstrance. see *supra*, p. 378, *note*.

† "The last night, the Parliament passed the great article, viz. to propound to his Highness the title, dignity, &c. of King; so that business will now be very shortly ended.

"Mr. Secretary is wholly taken up about this kingly affair, and, I believe, will scarce write this post. There were several bitter speeches made last night in Parliament against the business, but they could not carry it, there being almost two to one against them, and for it." Moreland to Pell, "Whitehall, 26 March, 1657." This majority is also reported to Mr. Pell, with an air of triumph, by Sir W. Lockhart, (see *supra*, p. 107.) from "Paris, March 31." *Lansdowne* MSS., 755, No. 62.

Thursday, March 26, 1657. Post Meridiem.

The Lord Chief Justice Glyn reported from the Committee, to whom the title, preamble and conclusion of the Remonstrance, &c. was referred.

Resolved, that this House doth agree with the Committee, that in the place of these words, "Address and Remonstrance," these words be inserted, "Petition and Advice."

Moreland had thus written to Pell:—

"Whitehall, 15 March, 1656-7. There has been lately a Bill presented in Parliament, by Sir Christopher Pack, an alderman, for the re-establishing a kingly government, the scanning whereof takes up all their time, and causes many serious debates. (I was about to have written hot debates, by some particulars.) They have, nevertheless, as I hear, passed several articles, or heads thereof. They leave the article wherein his Highness is desired to assume the title, dignity, &c. as King, till the last. A little time may produce great matters." *Lansdowne* MSS. 755. No. 63.

The following passages in later letters, written from Whitehall, by Moreland to Pell, are not uninteresting:—

"April 14. Not many days ago his Highness denied the crown, after the Parliament made a vote of adherence to their former resolutions, and thereupon sent a Committee yesterday to his Highness, to whom, in the Banquetting House, his Highness made a speech, so dark that none knows whether he will accept of it or no: but some think he will accept it. The Lord knows the issue of these things. The Parliament are, I think, providing reasons to persuade him."

"April 16. My Lord has not yet accepted the crown, but gives dubious answers; so that we know nothing as yet. I beseech the Lord to bless him. If ever man deserved a crown, I think he does." *Ibid.* No. 95, 96.

I have been disposed to conjecture, that Milton, so far from lending his pen to vilify the Long Parliament (*supra*, p. 383, *note* †) could not have resolved even to serve the public under the Usurpation, if he had not applied to Cromwell what he had said of Cæsar—"quamvis enim regnum in republic, violentiùs invadebat, erat tamen regno fortasse dignissimus." (Though he violently subverted the republic, he appeared most worthy to have reigned.) See "*Pro Populo Anglicano Defensio.*" (1651) p. 159.

Resolved, that this House doth agree with the Committee in this clause, *viz.* "And that your Highness would be pleased to consent, that nothing in this Petition and Advice contained, nor your Highness's assent thereto, shall be construed to extend to the dissolving of this present Parliament, but that the same shall continue and remain until such time as your Highness shall think fit to dissolve the same." And that this clause shall be part of the Petition and Advice.

Resolved, that the Parliament doth agree with the Committee in this clause, *viz.* "And that all Acts, which have passed, or shall pass, this Parliament, shall have the force and effect of Acts of Parliament, whether your Highness's assent thereunto, hath been, or shall be given by the name, style, title and office, of Lord Protector, or by the name, style, title and office of King." And that this clause be part of the Petition and Advice.*

Mr. Baron Parker reported from the same Committee the preamble and conclusion committed to them, and by them amended, which were read, and, upon the question, agreed and ordered to be part of the Petition and Advice.

Another clause was tendered, *viz.* "And that your Highness, and your successors will be pleased to take an oath, in such form as shall be agreed by your Highness and this present Parliament, to govern these nations, according to the law;" which was read, and, upon the question, agreed, and ordered to be part of this Petition and Advice.

Another clause was tendered, to be added in these words; "And in case your Highness shall not be satisfied to give your consent to all the matters and things, in this humble Petition and Advice, that then nothing in the same be deemed of force, to oblige the people of these nations in any the parti-

* Resolutions follow to continue in force all "Acts and Ordinances, not contrary to the Petition and Advice;" to confirm the appointments of judges, &c. and of the great officers of the state and army. Also to provide that law processes on suits "now depending" shall "stand good and effectual."

culars therein contained." Which was read, and, upon the question, agreed and ordered to be part of the Petition and Advice.

Friday, March 27, 1657. *Post Meridiem.*

The humble Petition and Advice of the knights, citizens, and burgesses, now assembled in Parliament, of this Commonwealth, being fairly ingrossed in vellum, was this day read.

Resolved, that his Highness the Lord Protector's consent be desired to this Petition and Advice.

Resolved, that this Petition and Advice shall be presented to his Highness by Mr. Speaker, and the whole House, and that Mr. Speaker, at the presenting thereof, do show the grounds and reasons inducing the House to this Petition and Advice.

Resolved, that a Committee be appointed to attend his Highness, the Lord Protector, to acquaint his Highness, that this House doth desire to attend his Highness, on some important affairs, and desire his Highness will be pleased to appoint a time and place for that purpose.

Monday, March 30, 1657.

The Lord Commissioner Lisle reported from the Committee appointed to attend upon his Highness accordingly; and that his Highness hath appointed Tuesday at eleven of clock, at the Banquetting-house in Whitehall.

Resolved, that in case his Highness the Lord Protector doth desire time to deliberate of an answer to the Petition and Advice, that then his Highness be presented with a copy thereof; and that the engrossment be brought back again by the clerk.

Tuesday, March 31, 1657.

The House rose at eleven of the clock: and Mr. Speaker, attended by the whole House, repaired to the Banquetting-house at Whitehall, to present unto his Highness the Lord Protector, the humble Petition and Advice.

His Highness, attended by the Lord President of the Council, and other officers of state came thither: where, after a learned speech made to his Highness by Mr. Speaker, he presented, in the name of the Parliament, the said humble Petition and Advice; which was read by the clerk of the Parliament. And that being done his Highness gave answer therein.*

Mr. Speaker's speech to the Lord Protector in the Banquetting House, the 31st March, 1657, at the tendering of the humble Petition and Advice, as it was at first tendered in the presence of the House of Parliament.

May it please your Highness,

I am commanded by the Parliament of England, Scotland, and Ireland, and in their name, to present this humble Petition and Advice, unto your Highness. I shall only acquaint your Highness with several grounds, (of the House) of this Petition before you enter into it. I am sensible that I speak before a great person, the exactness of whose judgment ought to scatter and chase away all unnecessary

* Thus the *Journal* of this day closes. The authors of the Parliamentary History complain of being "at a loss as to the result of this meeting," except from notices in *Mercurius Politicus*, No. 355.

That journalist quotes a few sentences from the Speaker's speech, and from the reply of the Protector; about a page; "only some short heads of what was much more copiously and elegantly spoken by his Highness to the Parliament, with that majesty and authority which appeared most eminent in all his public actions; in the repetition whereof" the journalist "had only to crave pardon, lest he had been injurious to the dignity of so wise and so serene a person." *Parl. Hist.* xxi. 59, 61.

The following pages will contain both speeches, copied *verbatim*, and now probably printed, for the first time, from the source described. *Supra*, p. 370, *note* †.

speeches, as the sun doth the vapours. I may begin, as the poet began his metamorphosis. *In nova fert animus mutatas dicere formas.* But my case is far different from that of the poet. His was fictitious, and a total change of persons and things. This is a real, but not a total change, and more of form than matter. This, in many particulars, is rather a remitter and restitution, than a change. His was the fruit of a poetical fancy—this, the labour and resolution of a Parliament.

The Parliament hath been in travail almost forty days, and after great deliberation, at last this is the production, a creature of one body, but many parts. As soon as it was produced, the pains of travail were soon forgotten, and yet the travail could not be but great; for, behold there was in it the government of three great nations. I am a servant, and a man not to vent my own conceits, but to declare the things which I have in command from the Parliament. I am not unlike a gardener, who gathers flowers in his master's garden, and out of them composeth a nosegay. I shall offer nothing but what I have collected in the garden of the Parliament, and what did arise out of that excellent discourse and debate, which was there used, upon framing of this Petition, and of the Government presented by it.

I shall first be bold to take the frame of it in pieces, and then look upon it as an entire body. The first part of the body of this is the head, which they did well approve of, but liked not the name, they desire to give it a new name, which is of King, and that your Highness would be pleased to assume that name. It is a change of name only, and you are desired to take it by the agreement of the representatives of three nations in Parliament. It is the ancient way by which good Kings were ever made. All Israel gathered themselves together at Hebron to make David King.

The Parliament did apprehend this name more congruous for the body than that of Protector, which was not formerly known in these nations, but in the minority or absence of the present King, as was the Duke of Bedford, in the minority of Henry VI., and the Duke of Somerset, in the minority of

that young Saint and King, Edward VI. The name and office of a King is better known, and more suitable to the laws and constitutions of these nations than that of a Protector. That name is ancient in this land; and taken notice of in Holy Writ, which is far more ancient, and there looked upon in a very good sense. It is a promise to Abraham that Kings should come of his loins;* and in another place, Kings are called nursing fathers.† The wise man, who was a King himself, to his precept (fear God), in the next place, adds, honour to the King. But the Israelites were rebuked for asking a King, and that very justly.

1. In the time. It was when the good prophet Samuel ruled over them, under God, and in this they rejected God himself, as the text saith.

2. In the manner of it. Give us a King to rule over us, after the manner of other nations; and other nations, at that time had Kings who exercised tyrannical government. The Parliament desireth no such King, but a King, as that article well expressed him, to rule according to the laws of the land.

Aristotle, in his Politics, speaketh of two sorts of Kings. He calleth one an absolute King, *Tyrannus*, who had no rule but his own will. These nations never acknowledged such a King. And secondly, a King *secundum legem*, according to the law.‡ The Kings of England were, in their constitutions, such Kings, however some of them in the exercise of their power made their will the law. Kings here are the guides of the people, but the laws are their guides. They are above the people, but the laws are above them.§ Kings (as King

* *Gen.* xxxv. 11. † *Isa.* xlix. 23.

‡ "Aristotle," says Algernon Sidney, "makes no other distinction between a king and a tyrant, than that the king governs for the good of the people, and the tyrant for his own pleasure or profit." *Discourses*. ch. iii. s. 7. (1704) p. 253.

§ "England," says *Sidney*, "acknowledges no other law than its own; and instead of receiving any from kings, does to this day obey none, but such as have been made by our ancestors or ourselves, and never admitted any king that did not swear to observe them." *Ibid.* (s. xxii) p. 326.

Saul was) may be taller than the people, they ought not to be taller than the laws.

The law is the safeguard and custody of all private interests. The lives, liberties, and estates of the people, are all in the keeping of the law; without this, every man hath the like right to every thing, *et cum teneant omnes omnia, nemo suum.* The people of these nations were never out of love with the name of King, but have been, with some of their persons, for their mal-administration. King Edward II. and King Richard II. of England, felt the smart of this truth. They were swayed with their will: they were deposed; but the son of the one, and the cousin-germain of the other, was made King; so the person, and not the King, was destroyed.

The office of the King standeth with the liberty of the people, else certainly it would not have been used so long here. *Anglica gens, libera gens.* They are a free people: their liberties have ever been precious unto them. Witness the multiplied confirmations of *Magna Charta;* the great charter of their liberties.* And, comparatively, England is more free than any other of their neighbour nations, and yet they have been governed by Kings; and I never heard that that office was presented as a grievance in any Parliament; *et difficile est tacere, cum doleas.* And it standeth with Christian liberty. Consider the promise before mentioned to Abraham, and the prophecy that Kings should be their nursing fathers. Kings, in this very nation, have been introducers and advancers of Christianity; and in this respect may be called procreating fathers. Lucius, the British King, brought in Christianity to this nation.† But it may

* See *infra*, p. 406, *note* †.

† "Lucius, a supposed king in some part of Britain," says *Milton*, "was the first of any king in Europe, that we read of, that received the Christian faith; and this nation the first that by public authority professed it: a high and singular grace from above, if sincerity and perseverance went along; otherwise an empty boast, and to be feared the verifying of that true sentence, 'The first shall be last.' And indeed, the praise of this action is more proper to King Lucius than common to the nation; whose first professing by public authority, was no real commendation of their true faith, which had appeared more sincere and praiseworthy, whether

be objected, it was planted here before, by Joseph of Arimathea.* I will not dispute this, for besides the monks of Glassenbury, many other learned men do affirm it; but it is doubtful and uncertain, for others deny it. But, admit the truth of it, yet Christianity was much besmeared, and lost amongst the Britons, before the time of Lucius. The dial of Christianity was so far gone back, that no shadow of Christianity could be found. I need no proof of this; it is apparent to such as have looked upon the history of Britain, and from Basingstochius,† and some other writers. King Edwin of Northumberland was converted by Paulinus, in the year 622. How readily and how soon, and thereupon a number of people converted! I may, with alteration of one word, make use of the old verse,

Regis ad exemplum totus convertitur *orbis*.‡

Paulinus, upon this, for thirty days together, did baptize

in this or any other nation, if it had been first professed without public authority, or against it, as it might else have been but outward conformity." See "The History of Britain; that part especially now called England. 1670." Republished by the late learned and venerable Baron Maseres. (1818) pp. 65, 66.

* "Nor yet then first (from Lucius) was the Christian faith here known, but even from the latter days of Tiberius, as Gildas confidently affirms, had been taught and propagated, and, as some say, by Simon Zeloteas; as others say, by Joseph of Arimathea, Barnabas, Paul, Peter, and their prime disciples. But of these matters, variously written and believed, ecclesiastical historians can best determine; as the best of them do, with little credit given to the particulars of such uncertain relations." *Ibid.* p. 66.

† John Basing, called *De Basingstoke*, from his birth-place, died in 1252, having become especially skilled in the Greek tongue, which he had studied at Athens, not then sunk under the degrading despotism of the Turk. Basingstochius was indeed a prodigy of learning, in an age when it was "the monks saying, *Græcum non est legi*, Greek is not to be read." It does not appear from the list of his works, to which of them the speaker here referred See *Biog. Brit.* (1778) i. 669, 670.

‡ From *Claudian*, who wrote *componitur*, the account of this royal

the people in the city of York, and in the river of Swayle, and those of Nottinghamshire in the river of Trent.

The examples of Kings are the most prevalent sermons to the people. And also King Oswald of Northumberland, being converted to Christianity, most of the people became Christians. There is yet some memory of him in the county of Northumberland,* where he fought his last battle with the Picts. The place to this day is called Hallow Down, or Hallow Field, which is a holy field; and there was a chapel built, called St. Oswald's chapel, standing there at this day. This name is a great security to your person, and so to the laws of the nation, and so to the liberties and properties of the people.

But it may be said, that the King hath many prerogatives, and it is hard to know them, and harder to limit them. For this, I say, that the prerogatives of the King are bounded by the laws, and it hath been seen by experience, that those Kings who have wound up prerogatives to too high a pin,

conversion Milton condescended to narrate from the monkish historians, "though savouring much of legend." The result, when the King was about to assume the Christian profession, he describes according to his own better judgment.

"Edwin would confer first with his chief peers and counsellors, that, if they likewise could be won, all at once might be baptized. They, therefore, being asked in council what their opinion was concerning the new doctrine, and well perceiving which way the King inclined, every one thereafter shaped his reply. The chief priest speaking first, discovered an old grudge he had against his gods, for advancing others in the King's favour above him their chief priest. Another, hiding his court-compliance with a grave sentence, commended the choice of certain before uncertain, upon due examination. To like purpose answered all the rest of his sages, none openly dissenting from what was likely to be the King's creed. Whereas the preaching of Paulinus could work no effect upon them, toiling till that time without success."

Milton further relates, that "Edwin to his faith adding virtue, by the due administration of justice, wrought such peace over all his territories, that, from sea to sea, man or woman might have travelled in safety: his care also was of fountains by the way-side, to make them fittest for the use of travellers." *History*, pp. 130, 134.

* Of which county the Speaker was now a representative.

have not only lost them, but themselves also.* The King's prerogative, and the laws, are not two distinct things, and if you can find no prerogatives by the law, you can expect none. The King's prerogative is part of the law. It is in the politic body as in the natural. There is not in the body of man one law in the head, and another of the body, but is one entire law.

You will find, when you hear this article read, the reasons of the Parliament's desire to your Highness, to accept this office. I shall forbear to mention them. Your virtues are so resplendent, that they [need] no tapers,† nor shall I take upon me to be a panegyrist, to extol you in your presence, nor can my weak expressions do it, if I should essay it. The Parliament cannot be suspected of flattery, therefore I shall leave your Highness to the expressions of the Parliament in this particular.

Next to that of the King, the Parliament took into their consideration Parliaments. And in this considered of two things, the one old, the other new. The old is, the calling of Parliaments every third year, which is an excellent law, made by the Long Parliament,‡ by whom many excellent laws were made; but there is a law more ancient than that; for a Parliament every year was enacted in Edward III.'s time.§

* Referring, probably, to the arbitrary pretensions of Charles, and his justly-merited fate.

† *Risum teneatis?*

‡ Feb. 15, 1640-1. See *Rushworth,* (1706) iii. 375.; *Parl. Hist.* ix. 218.

§ The Speaker, one of the learned lawyers, whose talents adorned the Republic and the Protectorate, and many of whom paid their court successfully at the Restoration, appears to have been well founded in this popular explanation of the statutes, Anno 4, C. 14, and Anno 36, C. 10, of *Edw.* III.

"It is there accorded," says Granville Sharp, after Lord Coke, "that a Parliament shall be holden every year once, and more often, if need be. But Sir William Blackstone supposes that the King never was obliged by these statutes to call a new Parliament every year; but only to permit a Parliament to sit annually, for the redress of grievances and dispatch of business, if need be. (1 *Com.* c. 2.) It is too true, indeed,

The people of England have ever delighted in the course of Parliaments, it being the only place where they can complain, and have redress of their grievances; the only place where they may put out their bad laws, and get a stock of better; the only place where they can speak freely of the oppression of great men, and injustice of Courts.

The other part of the article is new, which is for another House of Parliament. I may call this a self-denying request, a modest condescension to admit others into the bosom of so great a trust as that of legislative, (a very jealous point) therefore the desire of the Parliament may not be deemed unreasonable, to have the approbation of those persons thus intromitted, that they may know whom they trust. And the other

that our kings in general did not think themselves *obliged by these statutes to call a new Parliament every year*; nay, it is certain, that many of them would never have called a Parliament at all, had they not been *obliged* by necessity, and the circumstances of the times."

Those who had the advantage of knowing Granville Sharp, have no need to be informed, that, while devoting his nights and days to promote the liberation of the Negro race, he advocated the right of all mankind to the utmost practical liberty consistent with the just design of civil government.

For his exposure of Sir William Blackstone's courtly *theory*, especially by arguments drawn from the numerous *annual* election-writs, recorded in Prynne's *Brevia Parliamentaria Redivira*, see his "Declaration of the People's natural Right to a share in the Legislature." (1775) pp. 159, —170, *note*.

Major Cartwright, the early political friend of Granville Sharp, and a friend to the developement and defence of every just and liberal principle, after quoting *Prynne*, refers to the *Declaration*, "as having shown the arguments of Judge Blackstone to be without the shadow of a foundation." See "The Legislative Rights of the Commons vindicated. By John Cartwright." (1777) p. 18, *note*.

Speaking of "the Bill for triennial Parliaments," which, in the *Icon*, Charles is made to describe as an extraordinary royal favour, *Milton* says it "granted much less than two former statutes yet in force, by Edward III.; that a Parliament should be called every year, or oftener, if need were: nay, from a far ancienter law-book, called the *Mirror*, it is affirmed in a late treatise, called *Rights of the Kingdom*, that Parliaments, by our old laws, ought twice a-year to be at London."—*Iconoclastes*. (1649) p 41.

may seem as just, that bounds be set to their judicial proceedings, as appears in the fifth article.*

Next to this, care is taken to preserve the privileges of Parliament. I may call this, the life of Parliaments. If the privileges be invaded, the Parliament itself is invaded.

Next to this, they have added the qualifications of persons elected, and electing members of Parliament; and it is very necessary, at the conclusion of a civil war, to have it so; for though the war be ended, yet the difference of affections and opinions is not ended. Persons may be overcome in the field, passions and affections cannot. These qualifications are of two sorts; the one, moral, for their lives and conversations; the other, politic, for their affections. Then, for the triers of these qualifications; the determination of that question, *scopa latissima*, an hard and knotty question; this being to be done before they sat in Parliament; so that the House, of which they are members, could not try them. In this the Parliament have taken such course, as you will see in the Article. Although they try them not themselves, yet themselves will elect the tryers.†

They have added qualifications also for the members of the other House, which are in effect the same with the other. The other House is to consist of the number of seventy, at the most, and forty the least; the quorum twenty-one.‡

The trust committed to them is personal, and not to be executed by deputies or proxies.§

Their judicial power is also limited and circumscribed, and it is necessary to be so; for it is so natural for all men to be lovers and promoters of the latitude of their own jurisdictions, that it is now believed by many to be a very honest maxim, which the civilians have, *Boni judicis est ampliare jurisdictionem.* For other particulars, they are to observe the course of Parliaments.||

The next thing in consideration, is the revenue, to support the charge of this government; for the feet of government

* See *supra*, pp. 387, 388, *Parl. Hist.* xxi. 134, 135.

† See *supra*, pp. 390, 391; *Parl. Hist.* xxi. 133, 134.

‡ See *supra*, pp. 385, 386.

§ *Art.* v. *Parl. Hist.* xxi. 134, 135.

|| See *Art.* v. vi. *ut supra*.

ought not to be of clay, but of silver or gold. It must be built upon the rock of a revenue, or else it cannot stand. The revenue here may seem considerable, and yet not above the expenses. Two hands are sufficient for any of us who have but one belly to feed, but Briareus, who had fifty bellies to feed, stood in need of one hundred hands.

The Parliament are very tender of the purses of the people, and therefore are unwilling to open them wider than the necessities of affairs shall require; and really when their purses are opened too wide, not only their money, but their hearts fly out; nor shall this burden rest upon their lands, but be raised in another way.

The other part of the Article doth provide, that no tax or tallage be laid (with other words contained in the Petition of Right,*) but by consent of Parliament. This guardeth the people's property, and is no new thing; and is the privilege of the people of England, expressed in *Magna Charta*,†

* See *Art.* vi. *Parl. Hist.* xxi. 135, 136.

† See *supra*, p. 400. Those who examine the question with attention, will probably arrive at the unexpected conclusion, that "the people of England," in their collective capacity, were as little privileged by *Magna Charta*, as the numerous slave-population of Greece and Rome were protected by the free institutions of those famed republics.

An anonymous pamphlet was first published, in 1765, for the purpose of exposing as "only a scholastic dream," what the Duke of Richmond, some years after, so ably advocated, as a just and practicable political reform; "a more complete representation of the people, by admitting the lower classes of them into a share of the legisla[illegible]." The a[illegible] has given a translation of *Magna Charta*, subjoining [illegible] original published by Sir William Blackstone from a copy in the British M[illegible] He is thus led to investigate the real merits of that famous doc[illegible] as to its influence on popular freedom.

He has, I think, clearly shown, that "*Magna Charta* was not th[illegible] cause, but the consequence of a degree of liberty; and that what was liberty then, would be no better than slavery now." To prove this point, he remarks, that "of the sixty-three clauses, about twenty-six are employed in regulating the several parts of the feudal servitude then by law established;" that "the notion," (which the learned Speaker here implicitly adopts, as deduced from the provisions of *Magna Charta*) "that the people cannot of right be taxed but by their representatives, can claim no support or countenance from clause fourteen, since all who are there

but it is far more ancient, as may appear by the ancient records of this nation.

It is true, there have been invasions made by some of the Kings of England upon this; but they had commonly several gains by it in the conclusion.

The people have been always jealous and tender in this point; which may appear by several complaints, and the frequent super-sanction of *Magna Charta*.* I may call this the people's *Noli me tangere*. They will not be touched in any part of their estate; for if any part be not free, then is not the whole free. The charge for Ship-money† upon Mr. Hampden, a gentleman of a fair fortune, was but 20s.‡ but it is well known what that occasioned, and what might be the

summoned to Parliament for that purpose, are supposed to come of their own right, as the peers do at this day, without any election, mission, or representation whatsoever." He further remarks, "from clause thirty-nine, that this great security of being tried by his Peers, which is now claimed by the lowest Englishman, as his birth-right, was understood by *Magna Charta* only as a sort of aristocratical privilege, from which the greatest part of the nation were, by the common law of the land, excluded."

This writer was, I suspect, a courtier, who, in the early years of the last reign, not unmarked by popular discontents, would counteract the growing opinion that the former times were better than the present, and thus recover the declining national attachment to the person and government of his "truly British and patriotic Sovereign." Whoever he was, and he has, probably, long joined "the great majority," he not unreasonably concludes that the "so much boasted *Magna Charta*," has been "most boasted by those who never read it;" and that "those who take that trouble will see that it was only meant to ascertain the privileges of a small part of the nation, without any idea of what is now called the natural liberty of mankind." See "An Essay on the Constitution of England," 3d edit. (1793) pp. 10, 11, 14, 17, 18, 33.

* See *supra*, p 313, *note* *. † See vol. ii. p. 214, *note* †.

‡ "After the continued receipt of it for about four years together," says Lord Clarendon, "it was, at last, (upon the refusal of a private gentleman, to pay twenty or thirty shillings as his share) with great solemnity publicly argued before all the judges of England in the Exchequer Chamber, and by much the major part of them, the King's right to impose asserted, and the tax adjudged lawful: which judgment proved of more advantage and credit to the gentleman condemned (Mr. Hampden) than to the King's service." *History* (1705), i. 68. See *State Trials* (1776), i. 505—720; *Granger* (1775), ii. 212.

consequence; for if the King had power to impose 20*s*., the same power might have gone to 20,000*l*.

For the management of this great government, the Parliament is to be the King's Great Council, and in the intervals of Parliament, a Council is appointed. Therefore you will see great care taken in the choice of the Council. The number is great and considerable; and you will find that the quorum is such, as they cannot all ride upon one horse, as it was said of the Council of Lewis, the French King.

Next to this the government is to be assisted by Officers of State and Judges. There is a special provision for their approbation,* and it is very necessary it should be so.

These are like the Lions, that did support the throne of Solomon,† and have a great stroke in the frame of this government. And, besides this, these are the copies by which the people, for the most part, guide their actions; and they are not fit to be copies, except they be fair written, without blots, or any thing unworthy their authority.

Then for religion, they thought fit the true Christian Protestant religion be held forth and asserted, and a Confession of Faith to be agreed upon. And, to keep and preserve the esteem of the ministers of the Gospel and themselves, from the virulent tongues of petty and disorderly persons, it is provided that the punishment of these persons shall be according to the law; and if the law be defective, new laws to be provided in that behalf.

And then for tender consciences, there is a provision for them, for this government would not press upon them.

There are two extremities in state, concerning the causes of faith and religion, (that is to say) the permission of the exercise of more religions than one, which is a dangerous indulgence and toleration, and is not introduced by this government, nor I hope shall never be in these nations.‡ The

* *Art.* ix. See *Parl. Hist.* xxi. 136, 137, 148. † 1 *Kings* x. 19.

‡ Happily this hope has been long frustrated. England, (like Holland, as described by Sir W. Petty, *supra*, p. 100, *note*) though she has not attained to a perfectly impartial communication of civil rights, has yet largely proved the truth of that just and liberal sentiment, with which

other is the entering and sifting into men's consciences, when no overt scandal is given, which is a vigorous and strainable inquisition, as one calls it, and which is desired to be provided against in this Frame.

The Church hath been in all ages subject to contentions and schisms. There is scarce any one Epistle of Paul to the Churches but containeth some reprehension of unnecessary

Frederic II. concluded his *Mémoires de Brandebourgh*: that while "le faux zèle est un tyran qui dépeuple les provinces, la tolerance est une tendre mère que les rend florissantes."

The learned Speaker here appears far less enlightened than some of his contemporaries. Ten years before, Bishop Taylor had published his able arguments for "the Liberty of Prophesying," or public preaching. But the compatibility of civil authority with religious independence has, perhaps, never been described more clearly than by a clergyman who fled to the New World, in 1631, from the ecclesiastical tyranny of that time, and lived several months among the Indians to ascertain their language, manners, and customs, of which he published a very interesting description. There he eminently conciliated their good will, and, at length, became the founder of Rhode Island, on the principle of entire freedom of religious profession. This was Roger Williams, the friend and correspondent of Sir Henry Vane.

In 1644, he dedicated "to the High Court of Parliament" his "Conference between Truth and Peace." He contends for "a permission of the most Paganish, Jewish, Turkish, or Antichristian consciences and worships;" because "an inforced uniformity of religion throughout a nation confounds the civil and religious," while "the permission of other consciences and worships than a state professeth, only can procure a firm and lasting peace; good assurance being taken for uniformity of civil obedience." Writing in 1654, he thus illustrates the same opinion: —"There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe are common; and is a true picture of a commonwealth. It hath fallen out, some times, that both Papists and Protestants, Jews and Turks, may be embarked into one ship. Upon which supposal, I affirm, that all the liberty of conscience that ever I pleaded for, turns upon these two hinges; that none of the Papists, Protestants, Jews, or Turks, be forced to come to the ship's prayers or worship; nor compelled from their own particular prayers or worship, if they practise any. I further add, that I never denied that, notwithstanding this liberty, the commander of this ship ought to command the ship's course: yea, and also command that justice, peace, and sobriety, be kept and practised, both among the seamen and all the passengers." See Backus's "History of New England." *Boston* (1777) i. 297.

and schismatical controversies, and there will still be such controversies; but as they extend not to any point of faith, the persons differing are by this Article not excluded, out of fellowship, or out of preferment.*

In the next place, the Parliament thought fit that the Acts and Ordinances, for sale of lands, should be confirmed. This is for the present public peace, and the quiet of purchasers, and the honour of the nations.

Next, for places of trust. They are not to be committed to persons who have lifted up their hands against the Parliament or your Highness. This the Parliament hold necessary, in the conclusion of a civil war; and this I may call the hedge or wall of this government.

In the next place, the Parliament humbly propounds their own preservation,† nor can they be blamed in the tendering of this, especially when it is for the performance and achievement of public services.

Next, the Parliament hath taken care not to destroy old laws, nor ordinances, where they are not contrary to the new ones, but that both may stand together.‡

In the securing of the government they have been careful not to give the least *remora* or interruption to the course of justice. Justice is in the nation as the sun in the firmament; it cannot stand still, and justice, it must run as a stream, a constant stream. The stopping of the stream of justice may occasion an inundation of wrongs and oppressions, and sweep away the course of relief which the parties wronged were prosecuting.

In the next place, they are humble suitors that your Highness may be pleased to take an oath to govern according to law. The Kings of this nation have formerly done so, and it is only to request you to do that, which by the law you are bound to do.

Arbitrary government hath always been a terrible thing to the people of this nation. If the laws should not be upheld, all things would fall into confusion. I will use Mr. Pym's

* See *supra*, p. 395. † See *ibid*, 389. ‡ See *ibid*, *note*.

words in full Parliament, upon the arraignment of the Earl of Strafford: "The law is that which puts a difference betwixt good and evil, betwixt just and unjust. If you take away the law, all things will fall into a confusion, every man will become a law to himself. Lust will become a law, and envy will become a law. Covetousness and ambition will become laws;" and it is not difficult to determine "what decisions such laws will produce."* The laws of this nation are the flowers of it, which have been so dear to the people, that they have not stuck (when need required) to water them with their blood.

I have now done with the several pieces of the government, but not with the articles. There remaineth yet one. The Parliament hath so good an apprehension of this frame of government, in all the articles of it, that it is their humble desire, that you may be pleased to accept of them all. They are bound up in one link or chain; or like a building well knit and cemented, if one stone be taken out, it loosens the whole. The rejection of one may make all the rest unsuitable and impracticable. They are all offered unto you, with the same heart and affection, and we hope they will be received by you in the same manner. They are all the children of one mother, the Parliament, and we expect from your Highness an adoption of them all. The Parliament hath put the word (nothing) into this article,† *aut nihil aut totum dabit.* This proceedeth out of the fulness of their affections. They make the word (nothing) part of this article, that you may be induced to accept of the whole.

Now give me leave to put all the pieces of this government together, and to speak a word or two of the whole frame. I hope the entire frame of government thus offered is such as may be of good satisfaction to the people, and such as in which no envious eye may spy a fault or blot. Yet even the

* See "The Declaration of John Pym, Esq. upon the whole matter of the charge of High Treason against Thomas Earl of Strafford, April 12, 1641." (1641) p. 4.

† See *supra*, p. 395.

best government is always like the fairest crystal, in which every little grain is seen, which in a fouler stone is not perceived.

Next, give me leave to observe the time of the tender of this government as a very considerable circumstance. It comes in, attended with three benedictions, with peace at home, plenty, and health; and that of health, notwithstanding the great multitude of people flocking to this place.* The health universal of the people was never so good.

There is in this government a medley or mixture of regality and liberty, which Tacitus observes, were *res olim insociabiles*. It is made for the conservation of the regality of the Crown, and of lawful freedom in the people.

If you shall be pleased to accept of our humble desires, thus tendered to yourself, these are the spondences and undertakings of the Parliament,

1. They will readily and heartily join with you in the great work of reformation, a work happily begun by your Highness, and it is a blessed work.

2. In regulation of the Courts of Justice.

3. In abridging the delays and charges in law suits, and this latter is no very easy work; for there is a sort of people who much oppose this, and, which is the grief, those people are as many in number as the suits are. I shall not be afraid to name them; they are the defendants in every suit, the plaintiff and defendant, they are linked in one yoke, in one suit, yet they draw in contrary ways, one to the other, One motto may serve both plaintiff and defendant, which is expressed in an old adage *Festina Lentè*. The plaintiff will ride post with *Festina*, but *Lentè*, quoth the defendant, and puts the plaintiff's foot many times besides the stirrup by

* The frequent appearance of the plague, before 1665, accounts for the fears of an accumulated population in and near the metropolis, and the consequent restraints on the extension of buildings. See *supra*, p. 19, *note* §. In 1580, Queen Elizabeth, "by proclamation prohibited any new dwelling-houses to be built within three miles of the gates of the city; and ordered, that no more but one family should dwell in one house." See *Camden*.

Essoins, Imparlances, Arrests of Judgment, Vouchers, or the like, but the same may be capable of amendments.

And, lastly, they will join in other courses and councils, which may advance the good of these nations, that being the great and true end and scope of all their endeavours.

May it please your Highness, I am commanded by the Parliament to offer unto your Highness this Frame of Government, expressed in this humble Petition, which is a present sent unto your Highness from the Parliament. Give me leave to use the words of Jacob to his brother Esau, when he offered his droves of cattle unto him. We pray you, if we have found grace in your sight, then receive this present at our hands: we hope to feel the effect of your goodness in your good answer to this Petition.

There resteth only now, that I most humbly crave a pardon for myself, that having detained your Highness so long from hearing the Petition, which can best speak itself; and if I have expressed myself otherwise than I should, or would, that your Highness would cover it, and cast the veil of your grace upon it. If my weakness and infirmities had not been formerly known to your Highness, I am sure you know them now by this. I humbly beseech your Highness to help them by your benign interpretation.

The Lord Protector's speech* at the presenting of the humble Petition and Advice, on Tuesday, the 31st of March, 1657:—

Mr. Speaker,

This frame of Government, that it hath pleased the Parliament by your hand to offer to me, truly I should have a very brazen forehead, if it should not beget in me a great deal of consternation of spirit, it being of so high and great importance, as by your opening of it, and by the reading of it is manifest, to all men to be, the welfare, the peace, and settle-

* This speech I copied from the volume of MS. described *supra*, p. 370, *note* †. I have since corrected it, in a few places, from the copy received by Mr. Pell, resident at Zurich, April 18, 1657, as endorsed by him. I cannot find that this speech has ever been printed.

ment of three nations, and all that rich treasure of the best people in the world being involved therein. I say, this consideration alone ought to beget in me the greatest reverence and fear of God, that ever possessed a man in this world. I rather truly study to say no more at this time, than is necessary to give a brief and short answer suitable to the nature of the thing. The thing is of weight, the greatest weight of any thing that ever was laid before a man; and, therefore, it being of that weight, and consisting of so many parts as it doth, (in each of which much more than my life is concerned) truly, I think, I have no more to desire of you, at this time, but that you will give me time to deliberate and consider what particular answer I may return to so great a business as this.

I have lived the latter part of my age in (if I may say so,) the fire, in the midst of troubles. And all the things that have befallen me, since I was first engaged in the affairs of this Commonwealth, truly if they should be supposed to be brought into a narrow compass, that I could take a view of them at once, I do not think they would, nor do I think they ought, to move my heart and spirit, with that fear and reverence of God that becomes a Christian, as this thing that hath been now offered by you to me. And, truly, my comfort in all my life hath been, that the burdens that have lain heavy upon me, they have been laid upon me by the hand of God. And I have not known, and been many times at a loss which way to stand under the weight of what hath lain upon me; but by looking at the conduct, and pleasure of God in it, which hitherto I have found to be a good pleasure towards me, and should I give any resolution in this suddenly, without seeking to have an answer put into my heart, and so into my mouth by him that hath been my God and my guide hitherto, it would give you very little cause of comfort in such a choice as you have made in such a business as this is, because it would savour more to be of the flesh, to proceed from lust, to arise from arguments of self; and if (whatsoever the issue of this be,) it should have such motives in me, and such a rise in me, it may prove even a curse to you, and to these three nations, who I verily believe have in-

tended well in this business, and have had those honest and sincere aims at the glory of God, the good of his people, the rights of the nation. I very believe these have been your aims, and God forbid that so good aims should suffer by any dishonesty or indirectness on my part; for, although in the affairs, that are in the world, things may be intended well, (as they are always, or for the most part, by such as love God, and fear God, and make him their aims, and such honest ends and purposes as these, are, I believe, yours;) yet if these considerations fall upon a person or persons, that God takes no pleasure in, that perhaps may be at the end of his work, that to please any of those humours or considerations that are of this world, shall run upon such a rock as this is, without due consideration, without integrity, without sincerity, without approving the heart to God, and seeking an answer from him, and putting things, as for life and death to him, that such an answer may be received, as may be a blessing to the person to be used, to answer these noble and worthy, and honest intentions of those that have prepared and perfected this work. It would be like a match where a good and worthy and virtuous man mistakes in the person that he makes loves to, and (as it often proves,) it proves a curse to the man and to the family through mistake. And lest this should be so to you, and to these nations (whose good I cannot be persuaded but you have in your thoughts aimed at,) why then it had been better, I am sure of it, that I had never been born.

I have therefore but this one word to say to you, that seeing you have made progress in this business, and completed the work, on your part, I may have some short time to ask counsel of God, and of my own heart. And I hope, that neither the humour of any weak or unwise people, nor yet the desires of any that may have lusting after things that are not good, shall steer me to give other than such an answer as may be ingenuous and thankful, thankfully acknowledging your care, and integrity; and such an answer as shall be for the good of those, that I presume you and I serve, and are made to serve. And truly I may say this also, that as the thing will deserve deliberation, the utmost deliberation and

consideration on my part, so I shall think myself bound to give as speedy an answer to these things as I can.*

Friday, April 3, 1657.†

A letter from his Highness, the Lord Protector, dated this day, directed to the Speaker was this day read.

Resolved that a Committee be appointed to wait upon his Highness, the Lord Protector, upon this letter.

Resolved, that this Committee are to meet this afternoon, at three of the clock, in the Speaker's chamber: and that they attend, and hear what his Highness shall speak to them, and report it to the House.

Saturday, April 4, 1657.

Colonel Gorges reported from the Committee, to whom Mr. Bastwick's petition was referred,‡ the opinion and resolves of the said Committee.

* The following account of this transaction occurs in a letter from Mr. Moreland to Mr. Pell, at Zurich.

"Whitehall, 2d April, 1657. On Tuesday last a certain number of select persons of the Parliament had a solemn meeting and audience of his Highness in Whitehall, in the Banquetting-room, where Mr. Speaker, in the name of all the rest, propounded unto him a new model of kingly government, and to his own person the title and dignity of king. To which his Highness made answer, that, as it was a serious affair, so he required some time to give them a categorical answer, which, notwithstanding, should be as soon as might be. Opinions are very various, whether he will accept it or no, but that a little time will show. This is all the news here; indeed there is nothing else done or talked of here." *Lansdowne* MSS. 755, No. 97.

It is remarkable that the Under-Secretary should here so incorrectly mention "select persons of the Parliament." The Secretary in his letter to H. Cromwell, at Dublin, dated 31st March, says, "the Petition and Advice was this day presented to his Highness by the Speaker, with the whole House." See "The Thurloe State Papers," (1742), vi. 156.

† *Journals.*

‡ See *supra*, p. 373.

Resolved, that this House doth agree with the Committee.*

The Lord Commissioner Whitlock reported from the Committee appointed yesterday to attend his Highness the Lord Protector, that the said Committee did yesterday attend his Highness according to the order of the House, and that his Highness did express himself to the Committee to this effect:†

My Lords,

I am heartily sorry that I did not make the desire of mine known to the Parliament before this time, which was that I acquainted them with, by letter, this day. The reason was because some infirmity of body hath seized upon me these two last days, yesterday and Wednesday. I have, as well as I could, taken consideration of the things contained in the paper, which was presented to me by the Parliament in the Banquetting House, on Tuesday last, and sought of God, that I might return such an answer as might become me, and be worthy of the Parliament. I must needs bear this testimony to them, that they have been zealous of the two

* To continue to Mrs. Bastwick "during her life, the pension of forty shillings by the week." Also, to appropriate "forfeited lands, to the yearly value of 200*l.* in the county of Dublin, in Ireland," to be divided in five parts, between Mrs. Bastwick and her children.

† Here the *Journals* break off abruptly, as before (*supra*, p. 397) marking the *hiatus* by asterisks. The authors of *Parl. Hist.* (xxi. 61.) regret that they could not "supply the deficiencies from any contemporary authorities." It is, however, supplied in their *Appendix*, (1763) xxiii. 161. *Whitlock* says, "I spake to him upon the point of the title of King, giving reasons why he should accept of that title: the Protector urged his reasons against it, and I replied." *Memorials*, (1732) p. 655.

I have here copied this speech from the MSS., described *supra*, p. 370, *note* †. It is thus entitled (p. 314), "The substance of the Lord Protector's Answer (after deliberation had) to the offer of kingship, &c.: given in Whitehall, 3° Aprilis, 1657, Friday; the tender of the proposal being on Tuesday before, the 31st March."

greatest concernments that God hath in the world. The one is, that of religion, and of the preservation of the professors of it, to give them all due and just liberty; and to assert the truth of God, which you have done in part in this paper, and do refer them to be done more fully by yourselves and me; and as to the liberty of men professing godliness, under variety of forms amongst us, you have done that which was never done before; and I pray it may not fall upon the people of God as a fault in them, or any sort of them, if they do not put such a value upon what is done, as never was put on anything since Christ's time, for such a Catholic interest of the people of God.

The other thing cared for, is the civil liberty and interest of the nation, which, though it is, and indeed I think ought to be, subordinate to a more peculiar interest of God, yet it is the next best God hath given men in the world; and if well cared for, it is better than any rock to fence men, in their other interests. Then, if any whosoever think the interest of Christians, and the interest of the nation inconsistent, I wish my soul may never enter into their secrets. These are things I must acknowledge christian and honourable, and are provided for by you like Christian men, and even men of honour, and, like yourselves, Englishmen. And to this I must and shall bear my testimony, while I live, against all gainsayers whatsoever. And upon these two interests, if God shall account me worthy, I shall live and die. And I must say, if I were to give an account before a greater tribunal than any earthly one, and if I were asked why I have engaged all along in the late war, I could give no answer but it would be a wicked one, if it did not comprehend these two ends. Only give me leave to say, and to say it seriously (the issue will prove it so) that you have one or two considerations that do stick with me. The one is, you have named me by another title than I now bear. You do necessitate my answer to be categorical; and you have made me without a liberty of choice, save as to all. I question not your wisdom in doing of it; but I think myself obliged to

acquiesce in your determination, knowing you are men of wisdom, and considering the trust you are under. It is a duty not to question the reason of any thing you have done. I should be very brutish should I not acknowledge the exceeding high honour and respect you have had for me in this paper. Truly according to what the world calls good, it hath all good in it, according to worldly approbation of sovereign power; you have testified your value and affection, as to my person, as high as you could; for more you could not do. I hope I shall always keep a grateful memory of this in my heart, and by you I return the Parliament this my grateful acknowledgment. Whatever other men's thoughts may be, I shall not own ingratitude, but I must needs say, that that may be fit for you to do, which may not be fit for me to undertake. As I should reckon it a very great presumption, should I ask of you the reason of your doing any one thing in this paper, (except some very few things), the instrument bears testimony to itself; so you will not take it unkindly if I ask of you this addition of the Parliament's favour, love, and indulgence, unto me, if it be taken in tender part, if I give such an answer as I find in my heart to give in this business, without urging many reasons for it, save such as are most obvious, and most for my advantage in answering (to wit) that I am not able for such a trust and charge. And if the answer of the tongue, as well as the preparation of the heart be from God, I must say my heart and thoughts, ever since I heard the Parliament were upon this business, though I could not take notice of your proceedings therein without breach of your privileges, yet, as a common person, I confess I heard of it as in common with others. I must say, I have been able to attain no further than this, that seeing the way is hedged up to, as it is to me, that I cannot accept the things offered, unless I accept all,* I have not been able to find it my duty to God and you to undertake this

* See *supra*, p. 395, 396.

charge under that title.* The most I said in commendation of the Instrument may be returned upon me, as thus: are there such good things provided for, why cannot you accept them because of such an ingredient? Nothing must make a man's conscience a servant. And, really and sincerely, it is my conscience that guides me to this answer; and if the Parliament be so resolved, it will not be fit for me to use any inducement to you to alter their resolution.

This is all I have to say. I desire it may, and do not doubt but it will, be with candour and ingenuity represented unto them by you.

The question being propounded, that this House doth adhere to their humble Petition and Advice, presented to his Highness, the Lord Protector.

And the question being put, that that question be now put;

The House was divided. The *Noes* went forth.

Noes 65. Major-General Whalley and Colonel Talbot. Tellers.

Yeas 77. Major-General Howard,† and Major-General Jephson. Tellers.

* Whatever difficulties the *conscientious* Protector encountered in discovering his duty, his physician, Dr. Bates, a near observer, thus describes the jarring applications which forbad him easily to ascertain how far his interest might consist with his inclination in pursuing this last object of his ambition:—

"Leguleorum plerique, Commissarii, sive Delegati Magni Sigilli, Judices, Militúmque Præfecti quidam,—orant, instant, importunè atque ardenter efflagitant, ut Regio nomine in se recipiendo consentiat. Ex altera párte, Catabaptistæ, Sectarii, Democraticique, scriptis literis, colloquiis, petitionibus monitoriis aures obtundere, fatigare. Ille verò, dum hæc fierent, incertos æquè omnes ac dubios animi dimittit." *Elenchus*, (1676) pp. 312, 313. (Many lawyers, the Commissioners of the Great Seal, the Judges, and some officers of the army, intreat, urge, and earnestly importune him to assume the royal title. On the other hand, the Anabaptists, Sectaries, and Democrats, weary him with letters, conferences, and monitory petitions. He dismisses them all, alike dubious and ignorant of his real intention.)

† This member appears now, generally, to be called Lord Howard.

So it passed in the affirmative.

And the main question being put;

The House was again divided. The *Noes* went forth.

Noes 65. Major-General Disbrowe and Colonel Hewson, Tellers.

Yeas 78. General Montagu and Sir John Hobart, Tellers.

So it was resolved that this House doth adhere to their humble Petition and Advice, presented to his Highness, the Lord Protector.

Monday, April 6, 1657.

The House did, this day, resume the debate adjourned on Saturday last.

Resolved that this House do repair to his Highness the Lord Protector, to acquaint him with the vote of this House, passed on Saturday last.

Resolved, that the House do then present such reasons to his Highness therein, as shall be agreed upon, by this House.

Resolved, that a Committee be appointed to prepare those reasons, and present them to the House.

Tuesday, April 7, 1657.

The Lord Commissioner Whitlock reported, from the Committee to whom it was referred, to prepare reasons to be given to his Highness the Lord Protector, for insisting upon the humble Petition and Advice.

Resolved, that the House doth agree with the Committee in this, that these shall be the reasons presented to his Highness, for their adhering to their Petition and Advice, formerly presented, *viz.*

" That the Parliament having lately presented their hum-

ble Petition and Advice to your Highness, whereunto they have not as yet received satisfaction; and the matters contained in that Petition and Advice, being agreed upon by the great council and representative of the three nations; and which, in their judgments, are most conducive to the good of the people thereof, both in their spiritual and civil concernments, they have therefore thought fit to adhere to this advice; and to put your Highness in mind of the great obligation which rests upon you, in respect of this advice; and again to desire you to give your assent thereunto."

The Lord Chief Justice reported from the Committee appointed to attend his Highness, that the said Committee did accordingly attend his Highness,* who was pleased to

* "On a business of great importance." This Committee consisted of fifty members, of whom the first named is "Lord Broghill." A large majority favoured the project of a new royalty.

On this subject of kingship, (see p. 382, *supra*,) was "printed, January 1658-9," in eight pages, quarto, "A Brief Relation, containing an abbreviation of the arguments urged by the late Protector against the Government of this Nation by a King or a single Person; to convince Men of the danger and inconveniency thereof: urged by him to many of the Army, at St. Albans and Whitehall, (a little before the King was beheaded) and at several other places. Published for the good and information of Parliament, Army, and People." It thus commences:—

"*Imprimis.* Because it is possible, yea, more than ordinarily probable, that a single person, in a short time, will work over his council to his own will, though illegal; either in conferring places of honour and profit on them and their friends, or else in terrifying them by threats.

"2. Because that a single person being raised to such a state, is subject to wax wanton, and so forget, or rather neglect, the Commonalty, in providing for a few that will be at his beck.

"3. Because, notwithstanding for a time he may carry matters fair, and do some good things, Jehu-like, until he has gotten an interest in the affections of the people; then forgetting, or rather slighting what he formerly pretended to, instead of countenancing of justice and endeavouring reformation, it is possible he may become a favourer of iniquity; "Nay," said he, "a settler of a Court, or nurserie of whores, rogues, bawds, and such like persons as was evidently seen in former days at Whitehall." *Brief Relation*, p. 3.

It

appoint to-morrow, three of the clock, in the afternoon, in the Banquetting house, at Whitehall, to meet with the Parliament.

Wednesday, April 8, 1657.

Mr. Speaker desired the direction of the House, whether, when he hath read to his Highness the paper containing the answer, he shall deliver the same to his Highness: whether the paper should be signed by the Clerk; and whether the Petition should be carried. All agreed.

It is scarcely possible here, to forget the "settler of a Court, or nurserie" at Whitehall, destined so soon to occupy that palace, as the Protector's royal successor, "on whose Restoration," according to Bishop Burnet, O. T. (*ad regis exemplum,*) "the nation was overrun with vice." Yet the Bishop, whose moral taste was of no inferior order, had strangely written, just before, that he was "about to open an august and splendid scene."

END

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